

Version No. 019
Owners Corporations Act 2006
No. 69 of 2006

Version incorporating amendments as at
1 December 2021

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Owners Corporations Act 2006
No. 69 of 2006

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1 December 2021

The Parliament of Victoria enacts as follows:

Part 1—Introductory

1 Purposes

The main purposes of this Act are—

- (a) to provide for the management, powers and functions of owners corporations; and
- (b) to provide for appropriate mechanisms for the resolution of disputes relating to owners corporations; and
- (c) to amend the **Subdivision Act 1988** in relation to the creation of owners corporations.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 31 December 2007, it comes into operation on that day.

3 Definitions

In this Act—

agent provider means a person who, for a fee, arranges and manages short-stay accommodation on behalf of a lot owner, lessee or sub-lessee;

S. 3 def. of
*agent
provider*
inserted by
No. 34/2018
s. 4.

amend in relation to a rule, includes add to or replace;

approved form means form approved by the Director under section 200;

bank account means an account with an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth;

building includes—

- (a) a structure and part of a building or a structure; and
- (b) walls, out-buildings, service installations and other appurtenances of a building; and
- (c) a boat or a pontoon which is permanently moored or fixed to land;

Building Code of Australia has the same meaning as it has in section 3(1) of the **Building Act 1993**;

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday appointed under the **Public Holidays Act 1993**;

Business Licensing Authority means the Business Licensing Authority established under the **Business Licensing Authority Act 1998**;

common property means land shown as common property on a plan of subdivision or a plan of strata or cluster subdivision;

S. 3 def. of
*Building Code
of Australia*
inserted by
No. 34/2018
s. 4.

Council means the Council of the municipal district in which the land in the plan is located;

CPA Australia means CPA Australia
A.C.N. 008 392 452;

Director has the same meaning as it has in the **Australian Consumer Law and Fair Trading Act 2012**;

S. 3 def. of ***Director*** amended by No. 21/2012 s. 239(Sch. 6 item 33.1).

externally administered body corporate has the same meaning as it has in the Corporations Act;

function includes duty and authority;

guest does not include a contractor or a tradesperson engaged by the occupier of a lot;

S. 3 def. of ***guest*** inserted by No. 4/2021 s. 3(1).

hotel and resort management contract means, in relation to a hotel, resort or serviced apartment complex on land affected by an owners corporation—

S. 3 def. of ***hotel and resort management contract*** inserted by No. 4/2021 s. 3(1).

- (a) a letting agreement to provide an on-site letting manager (being a manager who lives at the hotel, resort or serviced apartment complex who manages letting of accommodation at the hotel, resort or complex); or
- (b) a common property agreement (including but not limited to a lease or a licence) to use common property for the purposes of—

- (i) operating an on-site letting business at the hotel, resort or serviced apartment complex; or

Example

Office, storage area or reception area.

- (ii) providing caretaking services at the hotel, resort or serviced apartment complex; or
- (c) a building maintenance or facilities management agreement to provide caretaking services at the hotel, resort or serviced apartment complex; or
- (d) any prescribed agreement or prescribed class of agreement relating to the management of a hotel, resort or serviced apartment complex by a third party;

S. 3 def. of *inspector* amended by No. 21/2012 s. 239(Sch. 6 item 33.2).

inspector means an inspector appointed under the **Australian Consumer Law and Fair Trading Act 2012**;

land includes buildings and airspace;

land affected by an owners corporation means the lots the owners for the time being of which are members of the owners corporation together with the common property for which the owners corporation is responsible;

Licensing Registrar means the Registrar of the Business Licensing Authority appointed under the **Business Licensing Authority Act 1998**;

limited owners corporation has the same meaning as it has in the **Subdivision Act 1988**;

lot has the same meaning as it has in the
Subdivision Act 1988;

lot affected by an owners corporation means a lot
the owner for the time being of which is a
member of the owners corporation;

lot entitlement in relation to a lot affected by an
owners corporation, means a number
specified in the plan as the lot entitlement for
that lot, expressing the extent of the lot
owner's interest in any common property
affected by the owners corporation;

lot liability in relation to a lot affected by an
owners corporation, means a number
specified in the plan as the lot liability for
that lot, expressing the proportion of the
administrative and general expenses of the
owners corporation which the lot owner is
obliged to pay;

lot owner, in relation to an owners corporation,
means an owner of a lot affected by the
owners corporation;

non-occupiable lot means—

- (a) a car park; or
- (b) a storage locker; or
- (c) a lot that is not ordinarily used for
residential or business purposes;

S. 3 def. of
*non-
occupiable lot*
inserted by
No. 4/2021
s. 3(1).

occupiable lot means a lot that is ordinarily used
for residential or business purposes;

S. 3 def. of
occupiable lot
inserted by
No. 4/2021
s. 3(1).

ordinary resolution means a resolution other than
a special resolution or a unanimous
resolution;

S. 3 def. of
*ordinary
resolution*
inserted by
No. 2/2008
s. 12(1).

owner has the same meaning as it has in the
Subdivision Act 1988;

owners corporation means a body corporate
which is incorporated by registration of a
plan of subdivision or a plan of strata or
cluster subdivision;

owners corporation register means the register
kept by an owners corporation in accordance
with section 147;

plan of subdivision has the same meaning as plan
has in the **Subdivision Act 1988**;

police officer has the same meaning as in the
Victoria Police Act 2013;

S. 3 def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
121.1).

S. 3 def. of
*prescribed
owners
corporation*
repealed by
No. 4/2021
s. 3(2).

* * * * *

Register means the Register under the **Transfer
of Land Act 1958**;

registered manager means a manager registered
under Part 6;

Registrar has the same meaning as it has in the
Transfer of Land Act 1958;

rules in relation to an owners corporation, means
the rules of the owners corporation for the
time being in force;

services only owners corporation means an owners corporation for a subdivision that has no land or building that is designated as the common property and either—

S. 3 def. of ***services only owners corporation*** inserted by No. 4/2021 s. 3(1).

- (a) the initial owner of the subdivision has arranged for a utility company to install common meters that are designated as the common property; or
- (b) the subdivision has a common supply or common service that is unmetered;

short-stay accommodation means accommodation provided under a short-stay accommodation arrangement;

S. 3 def. of ***short-stay accommodation*** inserted by No. 34/2018 s. 4.

short-stay accommodation arrangement means a lease or licence for a maximum period of 7 days and 6 nights to occupy a lot or part of a lot affected by an owners corporation that is—

S. 3 def. of ***short-stay accommodation arrangement*** inserted by No. 34/2018 s. 4.

- (a) in a building wholly classified as a Class 2 building in Part A3.2 of Volume One of the Building Code of Australia; or
- (b) in the case of a building where only part of that building is classified as a Class 2 building in Part A3.2 of Volume One of the Building Code of Australia—in that part of the building;

short-stay occupant means a person who occupies a lot or part of a lot under a short-stay accommodation arrangement;

S. 3 def. of ***short-stay occupant*** inserted by No. 34/2018 s. 4.

S. 3 def. of
*short-stay
provider*
inserted by
No. 34/2018
s. 4.

short-stay provider means—

- (a) the owner of a lot or part of a lot that is leased or licensed by the owner to a person under a short-stay accommodation arrangement; or
- (b) a lessee or sub-lessee of the owner of a lot or part of a lot that is leased or licensed by the lessee or sub-lessee to a person under a short-stay accommodation arrangement; or
- (c) an agent provider;

S. 3 def. of
*tier five
owners
corporation*
inserted by
No. 4/2021
s. 3(1).

tier five owners corporation has the meaning given by section 7(6);

S. 3 def. of
*tier four
owners
corporation*
inserted by
No. 4/2021
s. 3(1).

tier four owners corporation has the meaning given by section 7(5);

S. 3 def. of
*tier one
owners
corporation*
inserted by
No. 4/2021
s. 3(1).

tier one owners corporation has the meaning given by section 7(2);

S. 3 def. of
*tier three
owners
corporation*
inserted by
No. 4/2021
s. 3(1).

tier three owners corporation has the meaning given by section 7(4);

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tier two owners corporation has the meaning given by section 7(3);

S. 3 def. of *tier two owners corporation* inserted by No. 4/2021 s. 3(1).

2-lot subdivision means an owners corporation comprising of 2 occupiable lots;

S. 3 def. of *2-lot subdivision* inserted by No. 4/2021 s. 3(1).

unlimited owners corporation has the same meaning as it has in the **Subdivision Act 1988**.

Part 2—Functions and powers of owners corporation

Division 1—Functions and powers of owners corporation

4 Functions of owners corporation

An owners corporation has the following functions—

- (a) to manage and administer the common property;
- (b) to repair and maintain—
 - (i) the common property;
 - (ii) the chattels, fixtures, fittings and services related to the common property or its enjoyment;
 - (iii) equipment and services for which an easement or right exists for the benefit of the land affected by the owners corporation or which are otherwise for the benefit of all or some of the land affected by the owners corporation;
- (c) to take out, maintain and pay premiums on insurance required or permitted by any Act or by Part 3 and any other insurance the owners corporation considers appropriate;
- (d) to keep an owners corporation register;
- (e) to provide an owners corporation certificate in accordance with Division 3 of Part 9 when requested;

- (f) to carry out any other functions conferred on the owners corporation by—
 - (i) this Act or the regulations under this Act; or
 - (ii) the **Subdivision Act 1988** or the regulations under that Act;
 - (iii) any other law; or
 - (iv) the rules of the owners corporation.

Note

An owners corporation is a body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or cluster subdivision. An owners corporation has perpetual succession and is capable of suing and being sued in its own name. See section 28 of the **Subdivision Act 1988**.

Note to s. 4
amended by
No. 4/2021
s. 4.

5 Owners corporation must act in good faith

An owners corporation in carrying out its functions and powers—

- (a) must act honestly and in good faith; and
- (b) must exercise due care and diligence.

6 Powers of owners corporation

An owners corporation has—

- (a) all the powers conferred on the owners corporation by—
 - (i) this Act or the regulations; or
 - (ii) the **Subdivision Act 1988** or the regulations under that Act; or
 - (iii) any other law; or
 - (iv) the rules of the owners corporation; and
- (b) all other powers that are necessary to enable it to perform its functions.

S. 6(a)(ii)
amended by
No. 36/2011
s. 14.

S. 7
substituted by
No. 4/2021
s. 5.

7 The five tiers of owners corporations

- (1) For the purposes of this Act, an owners corporation falls within one of 5 tiers as specified in this section.
 - (2) A tier one owners corporation is an owners corporation that consists of more than 100 occupiable lots and is not a services only owners corporation.
 - (3) A tier two owners corporation is an owners corporation that consists of 51 to 100 occupiable lots and is not a services only owners corporation.
 - (4) A tier three owners corporation is an owners corporation that consists of 10 to 50 occupiable lots and is not a services only owners corporation.
 - (5) A tier four owners corporation is an owners corporation that consists of 3 to 9 occupiable lots and is not a services only owners corporation.
 - (6) A tier five owners corporation is—
 - (a) an owners corporation for a 2-lot subdivision; or
 - (b) a services only owners corporation.
 - (7) If an owners corporation consists of less than 10 occupiable lots and more than 50 non-occupiable lots, the tier into which the owners corporation falls is to be determined in accordance with subsections (2) and (3) as if a reference in those subsections to an occupiable lot were a reference to a non-occupiable lot.
 - (8) If an owners corporation consists solely of non-occupiable lots, the tier into which the owners corporation falls is to be determined in accordance with subsections (2) to (6) as if a reference in those subsections to an occupiable lot were a reference to a non-occupiable lot.
-

7A Owners corporation for 2-lot subdivision (tier five owners corporations)

S. 7A
inserted by
No. 4/2021
s. 5.

- (1) An owners corporation for a 2-lot subdivision is exempt from compliance with—
 - (a) sections 18, 31, 32, 59, 60, 61, 61A, 62, 65, 89A, 89B, 95, 96 and 97; and
 - (b) Divisions 2, 3 and 4 of Part 3; and
 - (c) Divisions 1, 2, 3, 4 and 5 of Part 4; and
 - (d) Divisions 1 and 2 of Part 9; and
 - (e) Division 1 of Part 10.
- (2) In any provision of this Act or any other Act as it applies in relation to an owners corporation for a 2-lot subdivision, a reference to—
 - (a) a unanimous resolution means a resolution passed by the total votes for those lots; and
 - (b) a special resolution means a unanimous resolution.

8 Services only owners corporation (tier five owners corporations)

S. 8
substituted by
No. 4/2021
s. 5.

A services only owners corporation is exempt from compliance with—

- (a) the provisions specified in section 7A(1); and
- (b) the following provisions—
 - (i) sections 48, 49, 50, 51, 61A, 129, 133 and 135;
 - (ii) Division 8 of Part 4;
 - (iii) Division 3 of Part 9.

9 Power to employ or engage persons

An owners corporation may appoint or employ persons to assist the owners corporation in carrying out its functions.

10 Execution of documents by owners corporation

- (1) An owners corporation may, in its own name or on behalf of its members, execute any document or do anything necessary or convenient to enable it to carry out its functions, powers, rights and obligations.
- (2) A document executed or any thing done under subsection (1) has effect as if the document was executed or the thing was done by the members of the owners corporation.
- (3) An owners corporation may authorise a document to be executed by at least 2 lot owners of separate lots who—
 - (a) sign the document; and
 - (b) print on the document—
 - (i) each lot owner's full name and address; and
 - (ii) a statement that each lot owner is a lot owner or a director of a body corporate that is a lot owner.

S. 10
substituted by
No. 4/2021
s. 6.

11 Management of owners corporation and power to delegate

- (1) An owners corporation is to be managed by or under the direction of the lot owners.
- (2) Subject to subsection (3), an owners corporation may, by instrument or by resolution at a general meeting, delegate any power or function of the owners corporation to—

S. 11
substituted by
No. 36/2011
s. 5.

- (a) the committee of the owners corporation;
 - (b) the manager of the owners corporation;
 - (c) a lot owner;
 - (d) the chairperson of the owners corporation;
 - (e) the secretary of the owners corporation;
 - (f) an employee of the owners corporation.
- (3) An owners corporation must not delegate any of the following powers or functions under subsection (2)—
- (a) a power or function that requires a unanimous resolution, a special resolution or a resolution at a general meeting;
 - (b) the power of delegation under that subsection.

Note

See section 82.

- (4) A resolution under subsection (2) is only effective if it is recorded in the minutes of the general meeting.
- (5) If no delegation is in force under subsection (2)(a), the committee of the owners corporation is delegated all powers and functions that may be exercised by the owners corporation, except for—
- (a) those powers and functions set out in subsection (3); and
 - (b) those matters which must be determined at a general meeting under section 82.
- (6) Subsection (1) does not give rise to any fiduciary duties or directors' duties on the part of lot owners.

Note

See section 5 for duties of an owners corporation.

Division 2—Powers relating to services

12 Provision of services to members and occupiers

- (1) An owners corporation, by special resolution, may decide—
 - (a) to provide a service to lot owners or occupiers of lots or the public; or
 - (b) to enter into agreements for the provision of services to lot owners or occupiers of lots.
- (2) An owners corporation may require a lot owner or occupier to whom a service has been provided to pay for the cost of providing the service to the lot owner or occupier.

13 Owners corporation not to carry on business

- (1) An owners corporation must not carry on a business.
- (2) An owners corporation may participate in or be a member of another body that carries on a business.

Division 3—Powers relating to property

14 Leasing or licensing of the common property

By special resolution, an owners corporation may lease or license the whole or any part of the common property to a lot owner or other person.

15 Power to obtain lease or licence over land

By special resolution, an owners corporation may obtain a lease or licence over any land (including Crown land) whether or not in the plan.

16 Power to acquire and dispose of personal property

- (1) An owners corporation may acquire or hold personal property for the use of lot owners or other persons.
- (2) An owners corporation may lease personal property to a lot owner or other person.
- (3) An owners corporation may dispose of personal property.
- (4) An owners corporation may obtain a licence for personal property for the use of lot owners or other persons.

17 Owners corporation must not mortgage or charge common property

An owners corporation must not mortgage or otherwise charge common property.

17A Water on common property

- (1) Any rainwater or other water that falls, occurs or flows on the common property (otherwise than in a waterway or a bore) is taken to be part of the common property.
- (2) For the purposes of section 8(4)(c) of the **Water Act 1989**, an owners corporation is the occupier of land to the extent that the land is common property.
- (3) In this section, *waterway* and *bore* have the same meanings as in section 3(1) of the **Water Act 1989**.

S. 17A
inserted by
No. 4/2021
s. 7.

Division 4—Power to commence legal proceeding

Pt 2 Div. 4
(Heading)
amended by
No. 4/2021
s. 8.

18 Power to commence legal proceeding

S. 18
substituted by
No. 4/2021
s. 9.

- (1) Subject to subsection (2), an owners corporation must not commence any legal proceeding unless it is authorised by special resolution to do so.
- (2) If a matter is within the civil jurisdictional limit of the Magistrates' Court and an owners corporation is authorised to do so by ordinary resolution, the owners corporation may commence any legal proceeding in—
 - (a) the Magistrates' Court; or
 - (b) VCAT or any other tribunal; or
 - (c) a court of another State or a Territory that corresponds to the Magistrates' Court.

Division 5—The common seal

18A Owners corporation not required to have or use common seal

- (1) An owners corporation is not required to have or use a common seal.

Note

Section 10 provides for the execution of documents of an owners corporation by signature.

- (2) Section 19 applies only to an owners corporation that has a common seal.
- (3) Sections 20, 21 and 22 apply only to an owners corporation that has a common seal and uses the common seal on a document.
- (4) An owners corporation that has a common seal under sections 19, 20, 21 and 22 may, by ordinary resolution, determine that the common seal is no longer required and can be destroyed.

19 The common seal

S. 18A
inserted by
No. 4/2021
s. 10.

- (1) The common seal of an owners corporation must include the name of the owners corporation and the plan of subdivision number of the plan that created the owners corporation. **S. 19(1) amended by No. 1/2010 s. 21(1).**
- (2) The common seal must be kept as directed by the owners corporation.
- (3) Despite subsection (1), a common seal that existed prior to the commencement of section 21 of the **Consumer Affairs Legislation Amendment Act 2010** is not invalid solely because it does not include the subdivision plan number. **S. 19(3) inserted by No. 1/2010 s. 21(2).**

20 When can the common seal be used?

- (1) The common seal of an owners corporation must not be used on a document unless its use for that purpose has been authorised by this Act, regulations made under this Act or a resolution of the owners corporation. **S. 20(1) amended by No. 1/2010 s. 22.**
- (2) The resolution to authorise the use of the common seal must be recorded—
- (a) in the minutes of the general meeting; and
 - (b) if the owners corporation keeps a common seal register, in that register.

21 Who must witness the use of the common seal?

- (1) The use of the common seal on a document must be witnessed by at least 2 persons who are owners of separate lots and are members of the owners corporation.
- (2) Despite subsection (1), in the case of an owners corporation with only one lot owner, the use of the seal must be witnessed by the lot owner.

S. 21(2A)
inserted by
No. 63/2010
s. 77(3),
amended by
No. 4/2021
s. 11.

- (2A) Despite subsection (1), the sealing of an owners corporation certificate may be witnessed by—
- (a) the registered manager; or
 - (b) the chairperson of the owners corporation elected under section 98.
- (3) If a lot owner is a corporation, a director of the corporation may witness the document on behalf of the corporation.
- (4) Each lot owner or director who witnesses the use of the common seal must record next to the seal that he or she has witnessed the use of the seal by—
- (a) signing his or her name; and
 - (b) printing in full his or her name and address; and
 - (c) stating that he or she is a lot owner or a director of the corporation that is a lot owner.

22 Judicial notice of use of common seal

All courts must take judicial notice of the common seal of the owners corporation on a document and, until the contrary is proved, must presume that the seal was properly used.

Part 3—Financial management

Division 1—Financial powers

23 Owners corporation may levy annual fees

- (1) An owners corporation may set annual fees to cover—
 - (a) general administration; and
 - (b) maintenance and repairs; and
 - (c) insurance; and
 - (d) other recurrent obligations of the owners corporation.
 - (2) If the owners corporation has an approved maintenance plan, the annual fees must include fees that are—
 - (a) designated for the purpose of the maintenance plan; and
 - (b) sufficient to allow the maintenance plan to be implemented.
 - (3) Subject to subsection (3A), the annual fees set must be based on lot liability.
- (3A) The owners corporation may levy an additional annual fee on a lot owner if—
- (a) the owners corporation has incurred additional costs arising from the particular use of the lot by the lot owner; and
 - (b) an annual fee set on the basis of the lot liability of the lot owner would not adequately take account of those additional costs.

**S. 23
(Heading)
amended by
No. 4/2021
s. 12(1).**

**S. 23(3)
substituted by
No. 4/2021
s. 12(2).**

**S. 23(3A)
inserted by
No. 78/2013
s. 3,
substituted by
No. 4/2021
s. 12(2).**

S. 23(3B)
inserted by
No. 4/2021
s. 12(2).

(3B) Any additional annual fees under subsection (3A) must be levied on the basis that the lot owner of the lot that benefits more from the use of the lot pays more.

S. 23(4)
amended by
No. 4/2021
s. 12(3).

(4) The owners corporation may determine the times for payment of annual fees.

S. 23A
inserted by
No. 4/2021
s. 13.

23A Owners corporation may levy fees in relation to insurance

- (1) In addition to the annual fees levied under section 23, an owners corporation may levy fees to cover the costs of the premium for reinstatement and replacement insurance taken out in accordance with Division 6 of Part 3.
- (2) The fees levied under subsection (1) must be based on lot entitlement.
- (3) An owners corporation may levy a lot owner a fee to cover the cost of any of the following—
 - (a) an excess amount or an increased premium resulting from or attributable to an insurance claim, if the claim is caused by a culpable or wilful act or the gross negligence of—
 - (i) a lot owner; or
 - (ii) a lot owner's lessee; or
 - (iii) a guest of a lot owner or a guest of a lot owner's lessee;
 - (b) damage to the common property that is caused by a lot owner or a lot owner's lessee where either—
 - (i) the damage is not covered by insurance; or

- (ii) the cost of the damage is less than the excess amount that would have been payable on an insurance claim in relation to the damage;
- (c) an excess amount on an insurance claim if the claim solely relates to a lot owner's lot.
- (4) The owners corporation may determine the times for payment of fees levied under subsection (1) or (3).

24 Extraordinary fees and charges

(1) An owners corporation may levy special fees and charges designed to cover extraordinary items of expenditure.

S. 24
(Heading)
amended by
No. 4/2021
s. 14(1).

(2) Subject to subsection (2A), the fees and charges must be based on lot liability.

S. 24(2)
substituted by
No. 78/2013
s. 4,
amended by
No. 4/2021
s. 14(2).

(2A) Fees and charges for extraordinary items of expenditure relating to repairs, maintenance or other works that are carried out wholly or substantially for the benefit of some or one, but not all, of the lots affected by the owners corporation must be levied on the basis that the lot owner of the lot that benefits more pays more.

S. 24(2A)
inserted by
No. 78/2013
s. 4,
amended by
No. 4/2021
s. 14(3).

(2B) The owners corporation may levy special fees and charges on a lot owner relating to repairs, maintenance and other works arising from the particular use of a lot by the lot owner.

S. 24(2B)
inserted by
No. 4/2021
s. 14(4).

(3) The owners corporation may determine the times for payment of the special fees and charges.

(4) A special resolution is required when exercising a power under subsection (1) if the amount involved

is more than twice the total amount of the current annual fees set under section 23.

S. 24(5)
amended by
No. 4/2021
s. 14(5).

- (5) Subsection (4) does not apply if the fees and charges are levied to pay for or recoup the cost of repairs or maintenance carried out to any part of the property for which the owners corporation is responsible where immediate expenditure is or was necessary to ensure safety or to prevent significant loss or damage to persons or property.

25 Power to borrow money

S. 25(1)(a)
amended by
No. 2/2008
s. 12(2).

- (1) An owners corporation may borrow money—
- (a) by ordinary resolution, if the amount borrowed does not exceed the amount of the current annual fees of the owners corporation set under section 23; or
 - (b) by special resolution in any other case.
- (2) An owners corporation may repay money borrowed.

26 Power to invest

An owners corporation may invest money.

27 Bank account

- (1) An owners corporation may establish and operate bank accounts.
- (2) Each bank account must be established in the name of the owners corporation.
- (3) All fees levied by an owners corporation under this Part must be paid into a bank account of the owners corporation or of the manager of the owners corporation.

28 Liability of lot owners

- (1) The owners for the time being and any purchaser in possession of, and any person entitled to

receive the rents and profits from, a lot are liable to pay any outstanding fees, charge, contribution or amount owing to the owners corporation in respect of that lot.

- (2) Subject to sections 24, 49 and 53, a lot owner is not liable to pay or contribute to the funds of the owners corporation a proportion of any amount required to discharge a liability of the owners corporation exceeding the lot owner's lot liability.

S. 28(2)
amended by
No. 4/2021
s. 15(1).

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S. 28(3)
repealed by
No. 4/2021
s. 15(2).

29 Penalty interest on arrears

- (1) If authorised by a resolution at a general meeting, an owners corporation may charge interest on any amount payable by a lot owner to the owners corporation that is still outstanding after the due date for payment.
- (2) The rate of interest charged must not exceed the maximum rate of interest payable under the **Penalty Interest Rates Act 1983**.
- (3) The owners corporation may waive the payment of interest in a particular case.
- (4) The owners corporation must report to the annual general meeting on any decision under subsection (3) to waive or not to waive the payment of interest in a particular case and the reasons for that decision.

S. 29(1)
amended by
No. 1/2010
s. 23(1).

S. 29(4)
inserted by
No. 1/2010
s. 23(2).

30 Recovery of money owed

- (1) Subject to subsection (2), an owners corporation may recover any money owed to the owners corporation in any court of competent jurisdiction as a debt due to the owners corporation.

- (2) Sections 31 and 32 and Division 1 of Part 11 apply to the recovery of money owed to the owners corporation by a lot owner.

31 Fee notice

- (1) The owners corporation must give notice to a lot owner in the approved form of any fees and charges due and payable by the lot owner to the owners corporation (the *fee notice*).
- (2) The fee notice must—
- (a) state that the lot owner has an obligation to pay the fees and charges within 28 days after the date of the notice; and
 - (b) (if applicable) state that interest at the rate specified in the notice will be payable in respect of any overdue fees and charges; and
 - (c) include details of the dispute resolution process that applies under the rules in respect of disputed fees and charges.

32 Final notice

- (1) If the money owing is not paid within 28 days after the date of the fee notice, the owners corporation may give a final notice in the approved form to the lot owner.
- (2) The final notice must—
- (a) state that the lot owner has an obligation to pay the overdue fees and charges and interest immediately; and
 - (b) (if applicable) state—
 - (i) the interest that is payable in respect of the overdue fees and charges at the date of the final notice; and

S. 32(1)
amended by
No. 4/2021
s. 16.

- (ii) the amount of interest that will accrue daily until the payment of the overdue fees and charges; and

- (c) state that the owners corporation intends to take action under Part 11 to recover the amount due if the overdue fees and charges and interest owing are not paid within 28 days after the date the final notice is given.

Note

Section 163(2) provides that an application to VCAT by the owners corporation for an order requiring a lot owner to pay an amount payable by the lot owner to the owners corporation can only be made if the amount is not paid within 28 days after the final notice is given under section 32.

Division 2—Accounts and audit

33 Financial records

- (1) An owners corporation must keep proper accounts that—
 - (a) cover all income and expenditure of the owners corporation and assets and liabilities of the owners corporation; and
 - (b) provide for the making of true and fair view reports of the financial situation of the owners corporation.
- (2) An owners corporation that has an approved maintenance plan must keep separate accounts for its maintenance fund.

34 Financial statements

- (1) An owners corporation that is a tier one owners corporation, a tier two owners corporation or a tier three owners corporation must prepare annual

**S. 34
substituted by
No. 4/2021
s. 17.**

financial statements for presentation at the general meeting of the owners corporation in accordance with the Australian Accounting Standards.

- (2) A tier four owners corporation must prepare annual financial statements for any financial year in which it levies annual fees.
- (3) In this section, *Australian Accounting Standards* has the same meaning as in the **Associations Incorporation Reform Act 2012**.

Note

Annual financial statements prepared under this section may be either General Purpose Financial Reports or Special Purpose Financial Reports as defined by the Australian Accounting Standards Board.

S. 35
amended by
Nos 2/2008
s. 13, 36/2011
s. 6,
substituted by
No. 4/2021
s. 18.

35 Audit of financial statements of owners corporations

- (1) A tier one owners corporation must, after the end of each financial year, cause its financial statements to be audited by—
 - (a) a registered company auditor; or
 - (b) a firm of registered company auditors; or
 - (c) a person who is—
 - (i) a member of CPA Australia, the Institute of Public Accountants or Chartered Accountants Australia and New Zealand; and
 - (ii) authorised to conduct the audit by CPA Australia, the Institute of Public Accountants or Chartered Accountants Australia and New Zealand.
- (2) A tier two owners corporation must, after the end of each financial year, cause its financial statements to be reviewed by an independent person who is a member of, and holds a current practising certificate from—

- (a) CPA Australia; or
 - (b) the Institute of Public Accountants; or
 - (c) Chartered Accountants Australia and New Zealand.
- (3) Despite subsection (2), a tier two owners corporation, at its annual general meeting, may resolve that its financial statements are to be audited after the end of the financial year in accordance with subsection (1).
- (4) A tier three owners corporation, at its annual general meeting, may resolve that its financial statements are to be audited in accordance with subsection (1) or reviewed by an independent person in accordance with subsection (2) after the end of the financial year.
- (5) A tier four owners corporation, or a tier five owners corporation, at its annual general meeting, may resolve that its financial statements are to be audited in accordance with subsection (1) or reviewed by an independent person in accordance with subsection (2) after the end of the financial year.
- (6) A person who audits the financial statements of an owners corporation must provide the owners corporation with a written report of the audit.
- (7) A person who conducts a review of the financial statements of an owners corporation must provide the owners corporation with a written report of the review.
- (8) A person must not be engaged to audit or review the financial statements of an owners corporation under this section if the person has a direct or indirect personal or financial interest in the owners corporation.

S. 35A
inserted by
No. 4/2021
s. 18.

35A Exemption from requirement to audit financial statements

- (1) A tier one owners corporation may apply in writing to the Director for an exemption from the requirement to audit its financial statements under section 35(1).
- (2) The Director may grant an exemption under subsection (1) subject to any conditions the Director thinks fit.
- (3) The Director, at any time, by notice in writing, may vary or revoke an exemption granted under subsection (2).

Division 3—Maintenance plan

S. 36
substituted by
No. 4/2021
s. 19.

36 Maintenance plan

- (1) A tier one owners corporation or a tier two owners corporation must prepare and approve a maintenance plan for the property for which it is responsible.
- (2) A tier three owners corporation, a tier four owners corporation or a tier five owners corporation may prepare and approve a maintenance plan for the property for which it is responsible.

37 What must a maintenance plan contain?

- (1) The maintenance plan must set out—
 - (a) the major capital items anticipated to require repair and replacement within the next 10 years; and
 - (b) the present condition or state of repair of those items; and
-

- (c) when those items or components of those items will need to be repaired or replaced; and
- (d) the estimated cost of the repair and replacement of those items or components; and
- (e) the expected life of those items or components once repaired or replaced; and
- (f) any other prescribed information.

(1A) An owners corporation may, by ordinary resolution, amend an approved maintenance plan.

S. 37(1A)
inserted by
No. 4/2021
s. 20.

(2) In this section—

major capital item includes—

- (a) a lift; or
- (b) an air conditioning plant; or
- (c) a heating plant; or
- (d) an item of a prescribed class.

38 When does a maintenance plan have effect?

- (1) A maintenance plan does not have effect unless it is approved by the owners corporation.
- (2) In approving a maintenance plan, an owners corporation may set conditions for the payment of money out of the maintenance fund.

39 Report on approved maintenance plan

The owners corporation must report to the annual general meeting in relation to the implementation of its approved maintenance plan.

Division 4—Maintenance fund

40 Establishment of maintenance fund

An owners corporation that has an approved maintenance plan must establish a maintenance fund in the name of the owners corporation.

S. 41
repealed by
No. 4/2021
s. 21.

* * * * *

S. 42
amended by
No. 4/2021
s. 22(2) (ILA
s. 39B(1)).

42 Payments into maintenance fund

(1) If an owners corporation has established a maintenance fund, the following must be paid into that fund—

S. 42(1)(a)
amended by
No. 4/2021
s. 22(1).

(a) any part of the annual fees that is designated as being for the purpose of the approved maintenance plan;

S. 42(1)(b)
amended by
No. 4/2021
s. 22(1).

(b) any amounts received under an insurance policy in respect of the damage or destruction of property covered by the approved maintenance plan;

(c) any interest earned on the investment of the money in the fund;

(d) any amounts of a prescribed kind;

(e) any amounts of a kind determined by the owners corporation.

S. 42(2)
inserted by
No. 4/2021
s. 22(2).

(2) The owners corporation must, by ordinary resolution, determine the amount of the annual fees that under subsection (1)(a) must be paid into the fund.

S. 42(3)
inserted by
No. 4/2021
s. 22(2).

(3) The amount determined under subsection (2) must be adequate to fund the approved maintenance plan.

S. 43
amended by
No. 2/2008
s. 12(2).

43 Payments from maintenance fund

Subject to any conditions specified in the regulations and an ordinary resolution of the

owners corporation, money may be paid out of the maintenance fund at any time in accordance with the approved maintenance plan.

44 Extraordinary payments from maintenance fund

S. 44
amended by
No. 4/2021
s. 23.

Money may also be paid out of the maintenance fund other than in accordance with the approved maintenance plan if the owners corporation by special resolution approves the payment.

45 Extraordinary payments for urgent matters

- (1) Subject to this section, money may also be paid out of the maintenance fund for an urgent matter.
- (2) For the purposes of subsection (1), an urgent matter includes where payments are required—
 - (a) to comply with an order of a court or VCAT;
 - (b) to repair or maintain any part of the property for which the owners corporation is responsible where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property;
 - (c) to repair any part of the property for which the owners corporation is responsible where the need for the repairs could not have been reasonably foreseen in preparing the approved maintenance plan;
 - (d) to enable the owners corporation to obtain adequate insurance for the property that the owners corporation is required to insure.
- (3) Expenditure under this section must not exceed—
 - (a) the amount necessary for the purpose for which it is expended; or

S. 45(2)(c)
amended by
No. 4/2021
s. 24.

- (b) any limitation imposed by the owners corporation on expenditure under this section.
- (4) Expenditure under this section must comply with any other restrictions or requirements imposed by the owners corporation.
- (5) The owners corporation must report to the lot owners on any expenditure under this section as soon as possible after the expenditure is made.

Division 5—Asset management

46 Owners corporation to repair and maintain common property

An owners corporation must repair and maintain—

- (a) the common property; and
- (b) the chattels, fixtures, fittings and services related to the common property or its enjoyment.

47 Owners corporation must repair and maintain services

- (1) An owners corporation must repair and maintain a service in or relating to a lot that is for the benefit of more than one lot and the common property.
- (2) An owners corporation may, at the request and expense of a lot owner, repair and maintain a service in or relating to a lot if it is impracticable for the lot owner to repair or maintain that service.
- (3) In this section—
service includes a service for which an easement or right is implied over the land affected by the owners corporation or for the benefit of

each lot and any common property by section 12(2) of the **Subdivision Act 1988**.

Note

The easements or rights that may be implied under section 12(2) of the **Subdivision Act 1988** are those necessary to provide—

- support, shelter or protection;
- passage or provision of water, sewerage, drainage, gas, electricity, garbage, air or any other service of whatever nature (including telephone, radio, television and data transmission);
- rights of way;
- full, free and uninterrupted access to and use of light for windows, doors or other openings;
- maintenance of overhanging eaves.

47A Lot owners must not repair, alter or maintain common property or services

**S. 47A
inserted by
No. 4/2021
s. 25.**

- (1) This section is subject to section 56 of the **Equal Opportunity Act 2010**.
- (2) A lot owner must not repair, alter or maintain—
 - (a) the common property of the owners corporation; or
 - (b) a service in or relating to a lot that is for the benefit of more than one lot or the common property.
- (3) Subsection (2) does not apply if a lot owner has been expressly authorised by the owners corporation to carry out the repairs and maintenance in accordance with section 46 or 47 as an agent of the owners corporation.

48 Lots not properly maintained

- (1) If a lot owner has refused or failed to carry out repairs, maintenance or other works to the lot owner's lot that are required because—
 - (a) the outward appearance or outward state of repair of the lot is adversely affected; or
 - (b) the use and enjoyment of the lots or common property by other lot owners is adversely affected—

the owners corporation may serve a notice on the lot owner requiring the lot owner to carry out the necessary repairs, maintenance or other works.

- (2) If a lot owner has been served with a notice under subsection (1), the lot owner must carry out the repairs, maintenance or other works required by the notice within 28 days of the service of the notice.
- (3) If a lot owner has been served with a notice under subsection (1) and has not complied with the notice within the required time, the owners corporation may carry out the necessary repairs, maintenance or other works to the lot.
- (4) An owners corporation may recover as a debt from a lot owner the cost of repairs, maintenance or other works carried out under subsection (3).

S. 48(4)
inserted by
No. 78/2013
s. 5.

S. 49
substituted by
No. 78/2013
s. 6.

S. 49(1)
amended by
No. 4/2021
s. 26.

49 Cost of repairs, maintenance or other works

- (1) An owners corporation may recover as a debt the cost of repairs, maintenance or other works carried out wholly or substantially for the benefit of one or some, but not all, of the lots affected by the owners corporation from the lot owners.

- (2) The amount payable by the lot owners is to be calculated on the basis that the lot owner of the lot that benefits more pays more.
- (3) The works referred to in this section may be to the common property or a lot.

50 When can an owners corporation authorise a person to enter a lot?

S. 50 amended by No. 4/2021 s. 27 (ILA s. 39B(1)).

- (1) An owners corporation may authorise a person to enter a lot or a building on a lot on its behalf to carry out repairs, maintenance or other works in accordance with section 47(1), 47(2) or 48(3).
- (2) An owners corporation may authorise a person to enter a lot or a building on a lot where necessary to carry out repairs, maintenance or other works on its behalf on the common property.

S. 50(2) inserted by No. 4/2021 s. 27.

51 What notice of entry must be given?

- (1) The owners corporation must give at least 7 days' notice in writing to the occupier of a lot of its intention to enter the lot unless—
 - (a) the occupier agrees to a lesser time; or
 - (b) there is an emergency.

- (2) Despite subsection (1), if the lot is occupied under a residential rental agreement within the meaning of the **Residential Tenancies Act 1997**, the owners corporation must give the same notice to the occupier as that required to be given by a residential rental provider under section 85 of that Act.

S. 51(2) substituted by No. 45/2018 s. 376.

- (2A) On receiving notice given in accordance with this section, the occupier of the lot must grant entry to the lot or a building on the lot to a person

S. 51(2A) inserted by No. 4/2021 s. 28.

authorised by the owners corporation under section 50.

(3) In this section—

emergency includes—

- (a) an interruption to gas, water, electricity, telephone, drainage, sewerage or a similar service; and
- (b) a leak or a similar problem requiring prompt attention; and
- (c) cracking or a similar structural problem likely to affect the immediate safety of a building or any person.

52 Significant alteration to common property requires special resolution

An owners corporation must not make a significant alteration to the use or appearance of the common property unless—

- (a) the alteration is—
 - (i) first approved by a special resolution of the owners corporation; or
 - (ii) permitted by the maintenance plan; or
 - (iii) agreed to under section 53; or
- (b) there are reasonable grounds to believe that an immediate alteration is necessary to ensure safety or to prevent significant loss or damage.

53 Upgrading of common property

- (1) An owners corporation may by special resolution approve the carrying out of upgrading works for the common property and the levying of fees on lot owners for that purpose.

S. 52(a)(i)
amended by
No. 2/2008
s. 12(2).

- (1A) Subject to subsection (1B), the fees must be based on lot liability. **S. 53(1A) inserted by No. 78/2013 s. 7.**
- (1B) Fees for upgrading works carried out wholly or substantially for the benefit of some or one, but not all, of the lots affected by the owners corporation must be levied on the basis that the lot owner of the lot that benefits more pays more. **S. 53(1B) inserted by No. 78/2013 s. 7.**
- (2) In this section ***upgrading works*** means building works for the upgrading, renovation or improvement of the common property where—
- (a) the total cost of the works is estimated to be more than twice the total amount of the current annual fees; or
 - (b) the works require a planning permit or a building permit before they can be carried out—
- but does not include works that are provided for in an approved maintenance plan or works referred to in section 4(b).

Division 5A—Disposal of goods abandoned on common property

Pt 3 Div. 5A (Heading and ss 53A–53E) inserted by No. 4/2021 s. 29.

53A Owners corporation may dispose of goods abandoned on common property

S. 53A inserted by No. 4/2021 s. 29.

- (1) An owners corporation may dispose of the goods abandoned on the common property in accordance with this Division.
 - (2) Sections 60 to 65 and 73 to 76 of the **Australian Consumer Law and Fair Trading Act 2012** apply to the disposal of abandoned goods by an owners corporation as if—
-

- (a) a reference to uncollected goods were a reference to the abandoned goods; and
- (b) a reference to the receiver were a reference to the owners corporation; and
- (c) a reference to the provider were a reference to the person who abandoned the goods.

S. 53B
inserted by
No. 4/2021
s. 29.

53B Notice of intention to dispose of goods abandoned on common property

- (1) A notice of the owners corporation's intention to dispose of abandoned goods must be in writing and include—
 - (a) the plan number and address of the owners corporation; and
 - (b) a description of the goods; and
 - (c) an address at which the goods may be collected; and
 - (d) a statement that on or after a specified date the goods will be disposed of by the owners corporation unless the goods are collected; and
 - (e) a statement that the owners corporation will retain from the proceeds of sale of the goods an amount not exceeding the cost to dispose of the goods.
- (2) A notice of intention may be given to the person who abandoned the goods personally or left at, or sent by post to, the person's last known address.
- (3) A notice to a person with a publicly registered interest in the abandoned goods is taken to have been given if it has been sent by post to the person's address in the register in which the interest is registered.

- (4) In this section, *publicly registered interest* has the same meaning as in the **Australian Consumer Law and Fair Trading Act 2012**.

53C Removal of goods to safe place

S. 53C
inserted by
No. 4/2021
s. 29.

Before disposing of the goods, an owners corporation may move the goods to a safe place, if—

- (a) the goods block reasonable access to a lot or the common property; and
- (b) the owners corporation has made a reasonable attempt to locate or communicate with the person who abandoned the goods in order to give the person a notice of intention to dispose of abandoned goods.

53D Disposal of goods

S. 53D
inserted by
No. 4/2021
s. 29.

An owners corporation must not dispose of the goods if—

- (a) a dispute exists between the person who abandoned the goods and the owners corporation in relation to the goods; and
- (b) an application has been made to VCAT by the owners corporation in relation to the dispute.

53E Owners corporation not liable in relation to disposed goods

S. 53E
inserted by
No. 4/2021
s. 29.

An owners corporation that disposes of goods under this Division is not liable in relation to the goods by reason of the disposal.

Division 6—Insurance

54 What is an insurable building?

In this Division—

S. 54 def. of
building
amended by
No. 1/2010
s. 24(1)(2).

building includes any building on the plan of subdivision and—

- (a) any improvements and fixtures forming part of the building; and
- (ab) any shared services; and

(b) anything prescribed as forming part of a building—

but does not include—

- (c) carpet and temporary floor, wall and ceiling coverings; or
- (d) fixtures removable by a lessee at the end of a lease; or
- (e) anything prescribed as not forming part of a building;

S. 54 def. of
shared services
inserted by
No. 1/2010
s. 24(3).

shared services includes any pipes or cables used to provide services including water, electricity, gas and telecommunications to the building that are shared with a person other than the owners corporation or any of its members.

55 Members may take out insurance

Nothing in this Act or the regulations limits the right of a lot owner to effect a policy of insurance in respect of destruction of or damage to the lot owner's lot or the lot owner's interest in the common property.

56 Owners corporation has insurable interest

An owners corporation must be taken to have an insurable interest in the land affected by the owners corporation.

57 Amount payable under owners corporation insurance

In calculating any amount payable under an insurance policy taken out by an owners corporation, any amount payable under an insurance policy taken out by a lot owner over that lot or the lot owner's interest in the common property must be disregarded.

58 Insurance if lot mortgaged

- (1) If an owners corporation has taken out an insurance policy over the land affected by the owners corporation, a mortgagee of a lot affected by the owners corporation must not require the lot owner to take out an insurance policy over the lot and the lot owner's interest in the common property unless—
 - (a) the mortgagee's interest is noted on the owners corporation's policy; and
 - (b) the sum insured in respect of the lot and interest in the common property under the owners corporation's policy is less than the sum owing under the mortgage and the extra insurance is for the amount of the difference.
- (2) A requirement that contravenes subsection (1) is void.
- (3) The following provisions apply where an owner's corporation has taken out an insurance policy and the lot owner has mortgaged the lot owner's lot and interest in the common property and the mortgagee's interest is noted on the policy—
 - (a) if the lot owner's property is damaged or destroyed and is not to be reinstated, the insurer must pay to the mortgagee the

amount owing under the mortgage (up to the sum insured in respect of the lot and interest in the common property) and, if there is a surplus, pay the balance to the lot owner;

- (b) if the owner's property is damaged or destroyed and is to be reinstated, the insurer must pay for the reinstatement up to the sum insured in respect of the lot and interest in the common property.

59 Reinstatement and replacement insurance

- (1) An owners corporation must take out reinstatement and replacement insurance for all buildings on the common property in accordance with this Division.
- (2) The insurance required under subsection (1) is insurance for damage to property under which the owners corporation insures for—
 - (a) the cost necessary to replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition when new; and
 - (b) the payment of expenses necessarily and reasonably incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary, being incidental to the replacement, repair or rebuilding of the damaged property.

S. 59(2A)
inserted by
No. 1/2010
s. 25.

- (2A) The insurance required under subsection (1) includes reinstatement and replacement insurance for the owners corporation's portion of any shared services.

- (3) The owners corporation must ensure that the insurance required under subsection (1) includes—
- (a) a provision that the interests of mortgagees are noted; and
 - (b) a provision that a mortgagee whose interest is noted shall be given the notices that are required under section 59 of the Insurance Contracts Act 1984 of the Commonwealth at the same time that those notices are given to the insured; and
 - (c) a provision that the insurer cannot avoid the whole contract for breach of a condition of the contract unless the breach is by the owners corporation or all lot owners, but the insurer has a right of indemnity against those lot owners who breach the contract.

60 Public liability insurance

- (1) An owners corporation must take out public liability insurance for the common property in accordance with this section.
- (2) The public liability insurance required under subsection (1) is insurance for any liability of the owners corporation to pay compensation in respect of—
 - (a) any bodily injury to or death or illness of a person; and
 - (b) any damage to or loss of property—which is sustained as a result of an occurrence or happening in connection with the common property.

S. 60(3)
amended by
No. 4/2021
s. 30.

- (3) The owners corporation must ensure that, in the insurance which the owners corporation has under subsection (2), the limit of liability is a minimum of \$20 000 000, or if another amount is prescribed, that other amount, in any one claim and in the aggregate during any one period of insurance.

61 Insurance for lots in multi-level developments

- (1) If a building on a plan of subdivision is located above or below common property, a reserve or a lot, the owners corporation must take out the following insurance in respect of all lots in the plan—
- (a) reinstatement and replacement insurance for all buildings on each lot in accordance with section 59; and
 - (b) public liability insurance in accordance with section 60—

as if any reference in those sections to common property were a reference to those lots.

S. 61(2)
substituted by
No. 2/2008
s. 14.

- (2) Subsection (1) does not apply to—
- (a) a single-storey building; or
 - (b) a plan of subdivision that was registered under the **Cluster Titles Act 1974** or the **Strata Titles Act 1967** unless one or more lots in the plan is located above another lot in the plan.

S. 61(3)
inserted by
No. 4/2021
s. 31.

- (3) If a plan of subdivision has separate buildings and either—
- (a) one or more of those buildings is a multi-level development and each multi-level development has its own owners corporation (including a tier one owners corporation); or

- (b) one of those buildings is a multi-level development with its own owners corporation (including a tier one owners corporation)—

the owners corporation of the multi-level development must only take out reinstatement and replacement insurance and public liability insurance in respect of the multi-level development on the plan of subdivision for which that owners corporation is liable.

Note

See also section 64.

61A Insurance for multiple single dwellings on a plan of subdivision

S. 61A
inserted by
No. 4/2021
s. 32.

An owners corporation on a plan of subdivision for multiple single dwellings with common property may, by unanimous resolution, resolve that the lot owner of each single dwelling is responsible to insure their lot.

62 Owners corporation may have additional insurance

S. 62
amended by
No. 2/2008
s. 12(3).

An owners corporation may, by ordinary resolution, resolve to insure any additional insurable interest—

- (a) in the land affected by the owners corporation; and
(b) relating to the performance of its functions.

63 Insurance not required where there is no common property

By unanimous resolution, an owners corporation may resolve that, if there is no common property, each lot owner must arrange for the lot owner's own insurance.

64 Insurance not required where another owners corporation has insured

This Division does not apply to an owners corporation if the land affected by the owners corporation is affected by another owners corporation which has the insurance required by this Division.

65 Valuation of buildings

S. 65(1)
substituted by
No. 4/2021
s. 33.

- (1) An owners corporation must obtain a valuation of all buildings that it is liable to insure.

Note

A tier five owners corporation is exempt from compliance with this section. See sections 7A and 8.

S. 65(1A)
inserted by
No. 4/2021
s. 33.

- (1A) An owners corporation of a multi-level development referred to in section 61(3) must only obtain a valuation of the multi-level development on the plan of subdivision for which it is liable to insure.
- (2) The valuation must be obtained every 5 years or earlier as determined by the owners corporation.
- (3) The owners corporation must present the valuer's report at the next general meeting after it is received.

Part 4—Meetings and decisions of owners corporation

Division 1—First meeting of owners corporation

66 When must the first meeting be held?

The applicant for registration of a plan of subdivision which provides for the creation of an owners corporation must convene the first meeting of the owners corporation within 6 months of the registration of the plan.

67 What documents must be provided at the first meeting?

S. 67
amended by
No. 4/2021
s. 34(3) (ILA
s. 39B(1)).

(1) At the first meeting of the owners corporation the applicant for registration of the plan of subdivision must provide all of the following for the purposes of the owners corporation—

- (a) the owners corporation register;
- (b) any accounts or records made on behalf of the owners corporation;
- (c) books to enable the owners corporation to keep the necessary minutes, accounts and other records;
- (d) a maintenance plan;
- (e) a copy of the plan of subdivision and all related building plans, planning documents and other similar documents;
- (f) a copy of this Act and the regulations and the **Subdivision Act 1988** and the regulations under that Act;
- (g) any contracts, leases and licences binding on or benefiting the owners corporation;

S. 67(1)(d)
substituted by
No. 4/2021
s. 34(1).

- S. 67(1)(j)
substituted by
No. 4/2021
s. 34(2).
- S. 67(1)(k)
inserted by
No. 4/2021
s. 34(2).
- S. 67(1)(l)
inserted by
No. 4/2021
s. 34(2).
- S. 67(1)(m)
inserted by
No. 4/2021
s. 34(2).
- S. 67(2)
inserted by
No. 4/2021
s. 34(3).
- (h) any insurance policies in force in relation to the property, including any insurance policy taken out under section 9AAA of the **Sale of Land Act 1962**;
 - (i) the names of the companies, tradespeople or suppliers who provided a warranty or other guarantee on any matter for which the owners corporation is responsible and copies of those warranties and guarantees;
 - (j) the building maintenance manual;
 - (k) an asset register;
 - (l) copies of any warranties or, if copies are not able to be provided, details of any warranties;
 - (m) copies of any specifications, reports, certificates, permits, notices or orders in relation to the plan of subdivision.
- (2) For the purposes of section 67(1)(l), a warranty must be assigned to the owners corporation if—
- (a) the warranty holder is the sole beneficiary of the terms of the warranty; and
 - (b) the warranty is capable of being assigned to the owners corporation.

S. 67A
inserted by
No. 4/2021
s. 35.

67A What must be disclosed at the first meeting?

At the first meeting of the owners corporation the applicant for registration of the plan of subdivision must disclose—

- (a) any relationship with the manager of the owners corporation; and
- (b) any immediate or future financial transactions that will, or will foreseeably, arise out of the relationship with the manager of the owners corporation and any specific benefits which flow to the applicant for registration as a result of that relationship.

67B Contract entered into by applicant for registration of the plan of subdivision prior to first meeting

S. 67B
inserted by
No. 4/2021
s. 35.

- (1) If the applicant for registration of the plan of subdivision appoints a third party manager prior to the first meeting of the owners corporation, the contract of appointment of the third party manager expires at that first meeting.
- (2) If the applicant for registration of the plan of subdivision enters into any other contract (other than a contract of appointment) that relates to the owners corporation and benefits the applicant for registration, any term of that contract must not exceed 3 years in duration, unless the term is in a contract that is a hotel and resort management contract that complies with the prescribed requirements (if any).
- (3) In this section—

third party manager means a person appointed as the manager who is neither an initial owner or a lot owner of the owners corporation.

67C Minutes of first meetings

S. 67C
inserted by
No. 4/2021
s. 35.

- (1) The owners corporation must arrange for minutes to be kept of the first meeting of the owners corporation.

- (2) The minimum information to be recorded in the minutes for the first meeting is the information referred to in section 81(2).
- (3) Any disclosure made under section 67A must be recorded in the minutes of the first meeting.

68 Obligations of initial owner

- (1) Subject to subsection (3), the initial owner of land affected by an owners corporation must act honestly and in good faith and with due care and diligence in the interests of the owners corporation in exercising any rights under this Act.
- (2) Subject to subsections (3) and (4), the initial owner of land affected by an owners corporation must take all reasonable steps to enforce any domestic building contract (within the meaning of the **Domestic Building Contracts Act 1995**) entered into by the initial owner in respect of land in the plan of subdivision providing for the creation of the owners corporation.
- (3) Subsections (1) and (2) apply to an initial owner only while the initial owner is the owner of a lot to which is, or the lots to which are, attached the majority of the lot entitlements of the lots affected by the owners corporation and only until the end of the period of 10 years following the registration of the plan of subdivision.
- (4) Subsection (2) applies only to the enforcement of a breach of contract—
 - (a) to the extent that it relates to the common property affected by the owners corporation; and
 - (b) of which the initial owner is aware or ought reasonably to be aware.

S. 68(3)
amended by
No. 4/2021
s. 36(1).

- (4A) The initial owner of land affected by an owners corporation or an associate of the initial owner must not—
- S. 68(4A)
inserted by
No. 4/2021
s. 36(2).
- (a) be appointed as the manager of the owners corporation; or
 - (b) vote on any resolution of the owners corporation that relates to a defect in or on a building on the plan of subdivision.
- (4B) The initial owner of land affected by an owners corporation must not—
- S. 68(4B)
inserted by
No. 4/2021
s. 36(2).
- (a) propose an annual budget of the owners corporation that is unreasonable or unsustainable; or
 - (b) designate as a private lot what normally would be common property or services; or
 - (c) receive any payment from the manager of the owners corporation in relation to the manager's contract of appointment.
- (5) In this section—
- S. 68(5)
substituted by
No. 4/2021
s. 36(3).
- associate***, of the initial owner, means—
- (a) a director of the initial owner; or
 - (b) an employee or agent of the initial owner; or
 - (c) a spouse, domestic partner, parent, brother, sister or child of the initial owner or the initial owner's representative; or
 - (d) a child of the spouse or domestic partner of the initial owner or the initial owner's representative;
- initial owner*** means the person who was the applicant for the registration of the plan of subdivision.
-

Division 2—Annual general meeting

69 Annual general meeting

- (1) An owners corporation must have an annual general meeting if it receives or pays out money in any financial year.
- (2) The time between the annual general meetings must not exceed 15 months.

Note

Section 100 provides for the election of a committee of the owners corporation at the annual general meeting.

70 Who may convene annual general meetings?

- (1) The first meeting of an owners corporation convened under section 66 is the first annual general meeting.
- (2) All other annual general meetings must be convened by—
 - (a) the chairperson of the owners corporation; or
 - (b) the secretary of the owners corporation; or
 - (c) the manager of the owners corporation, acting on the authority of the committee; or
 - (d) in the absence of a committee, the manager of the owners corporation or a lot owner.

71 Agenda for annual general meeting

- (1) The person convening an annual general meeting must prepare an Agenda setting out the matters to be dealt with at the annual general meeting.
- (2) The matters to be dealt with at the annual general meeting must include—
 - (a) the election of a committee, if the owners corporation is to have a committee;
 - (b) the appointment of a manager, if applicable;

- (c) the provision of details of the insurance held by the owners corporation;
- (d) the provision of details of fees fixed by the owners corporation during the year;
- (e) the consideration of the financial statements of the owners corporation;
- (f) the consideration of the proposed annual budget of the owners corporation;
- (g) the making of any delegations;
- (h) the consideration of any report under section 29(4), 39, 65(3), 115 or 126 or under section 159 in relation to disputes dealt with under Part 10;
- (i) the tabling and consideration of the minutes of the previous annual general meeting.

S. 71(2)(h)
amended by
No. 1/2010
s. 26(a).

S. 71(2)(i)
inserted by
No. 1/2010
s. 26(b).

72 Notice of annual general meetings

- (1) The person convening an annual general meeting must give notice in writing of the meeting to each lot owner at least 14 days before the meeting.

Note

The **Electronic Transactions (Victoria) Act 2000** enables this notice to be given electronically.

- (2) The notice must include the following—
 - (a) the date, time and place of the meeting; and
 - (b) the Agenda for the meeting; and
 - (c) the text of any special resolution or unanimous resolution to be moved at the meeting; and
 - (d) the financial statements of the owners corporation; and

S. 72(2)(f)
amended by
No. 1/2010
s. 27(1).

- (e) the proposed annual budget of the owners corporation; and
- (f) a statement that the lot owner has the right to appoint a proxy;

S. 72(2)(g)
inserted by
No. 1/2010
s. 27(2).

- (g) any report to be considered at the meeting under section 71(2)(h); and

S. 72(2)(h)
inserted by
No. 1/2010
s. 27(2).

- (h) the minutes of the previous annual general meeting.

Division 3—Special general meetings

73 What is a special general meeting?

A special general meeting is a meeting of an owners corporation other than an annual general meeting.

74 Who can convene a special general meeting?

A special general meeting may be convened by—

- (a) the chairperson of the owners corporation; or
- (b) the secretary of the owners corporation; or
- (c) a lot owner nominated by lot owners whose lot entitlements total at least 25% of all lot entitlements for the land affected by the owners corporation; or
- (d) the manager of the owners corporation—
 - (i) acting on the authority of the committee; or
 - (ii) if nominated by lot owners whose lot entitlements total at least 25% of all lot entitlements for the land affected by the owners corporation; or

(iii) in the absence of a committee.

75 Agenda for special general meeting

- (1) The person convening a special general meeting must prepare an Agenda setting out the matters to be dealt with at the special general meeting.
- (2) If the person convening the meeting has been nominated under section 74(c) or 74(d)(ii), the Agenda must be in accordance with an Agenda approved by the relevant lot owners when making their nominations.

76 Notice of special general meetings

- (1) The person convening a special general meeting must give notice in writing of the meeting to each lot owner at least 14 days before the meeting.

Note

The **Electronic Transactions (Victoria) Act 2000** enables this notice to be given electronically.

**Note to
s. 76(1)
amended by
No. 4/2021
s. 37.**

- (2) The notice must include the following—
 - (a) the date, time and place of the meeting; and
 - (b) the Agenda for the meeting; and
 - (c) the text of any special resolution or unanimous resolution to be moved at the meeting; and
 - (d) a statement that the lot owner has the right to appoint a proxy.

Division 4—Procedure at general meetings

77 Quorum for a general meeting

A quorum for a general meeting is at least 50% of the total number of lots or if 50% of the total number of lots is not available the quorum is at least 50% of the total lot entitlement.

**S. 77
amended by
No. 4/2021
s. 38.**

78 Can a general meeting proceed even without a quorum?

(1) Subject to subsection (4), if there is not a quorum, the general meeting may proceed but all resolutions are interim resolutions.

S. 78(1A)
inserted by
No. 4/2021
s. 39.

(1A) Subject to subsections (1B) and (1C), the manager of an owners corporation may pass an interim resolution at a general meeting of the owners corporation if no lot owner is present (whether in person or by proxy) at the meeting.

S. 78(1B)
inserted by
No. 4/2021
s. 39.

(1B) The manager must not pass an interim resolution under subsection (1) that—

- (a) affects the contract of appointment of the manager; or
- (b) involves an amount that is greater than 10% of the annual budget of the owners corporation; or
- (c) if the annual budget has not been set for the relevant year, involves an amount that is greater than 10% of the annual budget of the owners corporation for the previous year.

S. 78(1C)
inserted by
No. 4/2021
s. 39.

(1C) An owners corporation, by ordinary resolution, may exclude or alter the power of the manager to make an interim resolution under subsection (1A).

(2) Notice of all interim resolutions and the minutes of the meeting at which the interim resolution is made must be forwarded to all lot owners within 14 days of the meeting.

(3) The minutes must be accompanied by a notice setting out the effect of subsection (4).

- (4) Interim resolutions become resolutions of the owners corporation—
- (a) subject to paragraphs (b) and (c), 29 days from the date of the interim resolution; or
 - (b) if notice of a special general meeting is given within that 29 day period and the meeting is held within 28 days after the notice is given, only if confirmed at that meeting; or
 - (c) if notice of a special general meeting is given within that 29 day period and the meeting is not held within 28 days after the notice is given, at the end of that 28 day period.

Note

The effect of subsection (4) is that an interim resolution cannot be acted on for 29 days after it is made but if notice of a special general meeting is given within that 29 day period, the interim resolution cannot be acted on until the resolution is confirmed at that meeting (which must be held within 28 days after the notice is given) or if the meeting is not held, until the end of that 28 day period.

- (5) An interim resolution cannot be made under this section in respect of a matter requiring a unanimous resolution or a special resolution.

79 Who chairs the general meeting?

- (1) The lot owners present at a general meeting may elect one of their number or the manager of the owners corporation to chair the meeting.
- (2) If the chairperson of the owners corporation is present at a general meeting and an election under subsection (1) has not been made, the chairperson chairs the meeting.

Note

See sections 98, 105 and 106.

S. 79
substituted by
No. 2/2008
s. 15.

Note to
s. 79(2)
inserted by
No. 1/2010
s. 28.

80 Procedure at meeting

- (1) A lot owner may participate in a general meeting in person, by teleconferencing in accordance with the regulations, by proxy or in another manner provided for by the regulations.
- (2) Subject to this Act and the regulations, the procedure at a general meeting is in the discretion of the owners corporation.

81 Minutes of meetings

- (1) The owners corporation must arrange for minutes to be kept of general meetings.
- (2) The minimum information to be recorded in the minutes for each general meeting is—
 - (a) the date, time and place of the meeting; and
 - (b) the names of lot owners present; and
 - (c) the names of lot owners who have provided proxies; and
 - (d) the names of proxies present; and
 - (e) the voting on any resolutions; and
 - (f) the text of all resolutions of the owners corporation made at the general meeting.

82 Owners corporation may require certain matters to be dealt with at general meetings

An owners corporation may, by ordinary resolution at a general meeting, determine that a matter or type of matter that may be determined by ordinary resolution may be determined only by ordinary resolution of the owners corporation at a general meeting.

Note

See section 90(a).

**Note to s. 82
inserted by
No. 1/2010
s. 29.**

Division 5—Ballots

83 Who can arrange a ballot?

A ballot of an owners corporation may be arranged by—

- (a) the chairperson of the owners corporation; or
- (b) the secretary of the owners corporation; or
- (c) a lot owner nominated by lot owners whose lot entitlements total at least 25% of all lot entitlements for the land affected by the owners corporation; or
- (d) the manager of the owners corporation—
 - (i) acting on the authority of the committee; or
 - (ii) if nominated by lot owners whose lot entitlements total at least 25% of all lot entitlements for the land affected by the owners corporation; or
 - (iii) in the absence of a committee.

84 How can a ballot be conducted?

A ballot may be conducted by post or by telephone, facsimile, the Internet or other electronic communication.

85 Notice of ballot

- (1) The person arranging a ballot must give notice in writing of the ballot to each lot owner at least 14 days before the closing date for the ballot.

Note to
s. 85(1)
amended by
No. 4/2021
s. 40(1).

Note

The **Electronic Transactions (Victoria) Act 2000** enables this notice to be given electronically.

S. 85(2)(a)
substituted by
No. 4/2021
s. 40(2).

- (2) The notice must include the following—
- (a) the closing date for the ballot, being—
 - (i) 14 days after the date of the notice; or
 - (ii) if the matter that is the subject of the ballot is urgent, less than 14 days after the date of the notice; and
 - (b) the ballot document containing the motion, including the text of any resolution to be voted on in the ballot; and
 - (c) a statement that the lot owner has the right to appoint a proxy.

86 Resolution by ballot

S. 86(1)
repealed by
No. 4/2021
s. 41(1).

* * * * *

- (2) A resolution of the owners corporation by ballot is made as follows—
- (a) matters requiring an ordinary resolution must be passed by a majority of the votes returned by the closing date but the number of votes returned must be not less than the number needed for a quorum in accordance with section 77;
 - (b) other matters must be passed by a special resolution or unanimous resolution, as appropriate.

Note

Section 88 provides for the manner in which a lot owner may vote on a resolution of the owners corporation by ballot.

Note to s. 86(2) inserted by No. 4/2021 s. 41(2).

- (3) If a ballot is arranged by a person nominated by lot owners, the lot owners must give the owners corporation all information necessary to enable it to keep records of the ballot.

Division 6—Voting

Pt 4 Div. 6 (Heading and ss 87–89) amended by Nos 2/2008 s. 16, 36/2011 s. 7, substituted as Pt 4 Div. 6 (Heading and ss 87–89H) by No. 4/2021 s. 42.

87 One vote for each lot

For any resolution of an owners corporation, there is to be one vote for each lot, whether the resolution is voted on—

- (a) at a meeting; or
(b) by ballot.

Note

Joint lot owners of a lot have only one vote between them in respect of that lot.

S. 87 substituted by No. 4/2021 s. 42.

88 Voting on a resolution of the owners corporation by ballot

A person may vote on a resolution of the owners corporation by ballot by completing the ballot form and forwarding it to the secretary of the owners corporation in accordance with the rules of the owners corporation.

S. 88 substituted by No. 4/2021 s. 42.

S. 89
substituted by
No. 4/2021
s. 42.

89 Voting on a resolution of the owners corporation at a meeting

- (1) Subject to subsection (3), a person may vote on a resolution of the owners corporation at a meeting by a show of hands or in another prescribed manner, unless the meeting resolves otherwise.
- (2) Any matter (other than a matter requiring a special resolution or a unanimous resolution) must be determined at a meeting by a simple majority of votes cast at the meeting.
- (3) At a meeting, a lot owner may (either in person or by proxy) before or after the vote is taken for an ordinary resolution, require that a poll be taken based on one vote for each unit of lot entitlement.
- (4) Voting in a poll under subsection (3) must be by written vote.
- (5) If a poll is required after the vote is taken at a meeting, the decision on a matter determined by a simple majority of votes cast at the meeting has no effect and the decision on that matter is the decision of the poll.
- (6) A person who participates in a meeting by a teleconference or another prescribed manner is taken to be present in person at the meeting.

S. 89A
inserted by
No. 4/2021
s. 42.

89A Does the chairperson have a casting vote?

- (1) The chairperson of the owners corporation has a second vote or the casting vote on a resolution of the owners corporation if—
 - (a) the voting on the resolution is equal; and
 - (b) the chairperson is a lot owner or authorised to vote on behalf of a lot owner as a proxy.

- (2) If the voting on a resolution is equal and the chairperson does not exercise a casting vote, the resolution of the owners corporation is taken to not be passed.

89B Can a lot owner vote if fees are unpaid?

S. 89B
inserted by
No. 4/2021
s. 42.

- (1) A lot owner who is in arrears for any amount owed to an owners corporation is not entitled to vote (either in person, by ballot or by proxy) on a resolution of the owners corporation unless the amount in arrears is paid in full.
- (2) Despite subsection (1), a lot owner who is in arrears for any amount owed to an owners corporation may vote on any matter where a special resolution or unanimous resolution is required.
- (3) For the purposes of subsection (1), the amount in arrears is taken to be paid in full if it is paid to the owners corporation—
- (a) in cash; or
 - (b) otherwise, not less than 4 business days—
before the lot owner is required to vote on the resolution.

89C Proxies

S. 89C
inserted by
No. 4/2021
s. 42.

- (1) A lot owner may authorise a person in writing to be the lot owner's proxy in any of the following capacities—
- (a) to attend, speak or vote on behalf of the lot owner at a meeting of the owners corporation;
 - (b) to vote on behalf of the lot owner at a ballot;
 - (c) to represent the lot owner on a committee of the owners corporation.

Note

See section 138A.

- (2) Despite subsection (1)(c), a lot owner who is a member of the committee of the owners corporation must not authorise a person to act as a proxy to represent the lot owner on the committee unless that person is also a member of the committee.

- (3) An authorisation under subsection (1) must—
 - (a) be in the prescribed form; and
 - (b) authorise an individual; and
 - (c) be delivered to the secretary of the owners corporation.

- (4) An authorisation may set out how a proxy is to vote on particular matters and is effective from the beginning of the first meeting of the owners corporation held after the date that the authorisation is delivered to the secretary of the owners corporation.

- (5) An authorisation must not be transferred by a person who is authorised as a proxy to another person.

- (6) An authorisation lapses—
 - (a) 12 months after it is given by a lot owner; or
 - (b) if an earlier date is specified in the authorisation, on that date.

- (7) A person who is not a lot owner but who is the proxy of a lot owner may not vote on any matter that affects that person relating to—
 - (a) the delegation of powers and functions of an owners corporation under section 11; or

- (b) the appointment, payment or removal of the manager of an owners corporation under Part 6.
- (8) A person authorised to act as a proxy must act honestly, in good faith and exercise due care and diligence.
- (9) A contract of appointment of the manager of an owners corporation made in contravention of subsection (7)(b) is void unless it is affirmed by the owners corporation by special resolution.
- (10) If a lot owner is in arrears for any amount of fees or other amount owing to the owners corporation, the lot owner must not—
 - (a) vote as a proxy on behalf of another lot owner at a meeting of the owners corporation; or
 - (b) represent another lot owner as a proxy on a committee of the owners corporation.

89D Restriction on number of lot owners on behalf of whom a proxy may vote on a resolution

S. 89D
inserted by
No. 4/2021
s. 42.

- (1) A person must not vote as a proxy on a resolution at a meeting of the owners corporation—
 - (a) on behalf of more than one lot owner—if there are 20 or less occupiable lots on the plan of subdivision; or
 - (b) on behalf of more than 5% of the lot owners—if there are more than 20 occupiable lots on the plan of subdivision.
- (2) Subsection (1) does not apply if—
 - (a) the lot owners for whom the person is authorised to vote on behalf of are members of that person's family; or

- (b) the person votes as a proxy in the prescribed circumstances.

S. 89E
inserted by
No. 4/2021
s. 42.

89E Revocation of a proxy

- (1) A lot owner may, at any time—
 - (a) revoke an authorisation of a proxy under this section by written notice given to the secretary of the owners corporation; and
 - (b) vote at a meeting or in a ballot instead of the proxy.
- (2) A notice of revocation under subsection (1) takes effect on the date that the notice is given to the secretary.

S. 89F
inserted by
No. 4/2021
s. 42.

89F Voting under power of attorney

- (1) A person acting under a power of attorney may vote on behalf of a lot owner at a general meeting or in a ballot of the owners corporation if this is authorised under the power of attorney.
- (2) Despite subsection (1), a person must not vote under a power of attorney on a resolution at a general meeting of the owners corporation—
 - (a) on behalf of more than one lot owner—if there are 20 or less occupiable lots on the plan of subdivision; or
 - (b) on behalf of more than 5% of the lot owners—if there are more than 20 occupiable lots on the plan of subdivision.
- (3) Subsection (2) does not apply if the lot owners for whom the person is authorised to vote on behalf of are members of that person's family.
- (4) A person acting under a power of attorney for a lot owner may authorise another person to act as a proxy for the lot owner under section 89C.

- (5) If a person is authorised to vote on behalf of a lot owner under a power of attorney, this Part applies in relation to that power of attorney as if the person who holds the power of attorney was the lot owner.

89G Person must not require or demand that a lot owner give authorisation to vote under power of attorney or proxy

S. 89G
inserted by
No. 4/2021
s. 42.

A person must not require or demand that a lot owner authorise that person or another person to vote on behalf of the lot owner at a meeting or a ballot of an owners corporation—

- (a) under a power of attorney; or
- (b) as a proxy.

Penalty: 60 penalty units.

89H Term of contract of sale limiting voting rights void

S. 89H
inserted by
No. 4/2021
s. 42.

Any term of a contract of sale of a lot that limits or controls the voting rights of the purchaser of the lot in relation to the owners corporation is void.

Division 7—Decisions of owners corporation

90 Resolutions by meeting or ballot

Resolutions of the owners corporation may be made—

- (a) at a meeting; or
- (b) by ballot.

Ss 91–93
repealed by
No. 4/2021
s. 43.

* * * * *

S. 94
substituted by
No. 1/2010
s. 30,
repealed by
No. 4/2021
s. 43.

* * * * *

95 What is a unanimous resolution?

A unanimous resolution of an owners corporation is a resolution passed by—

- (a) if a ballot or poll is taken, the total lot entitlements of all the lots affected by the owners corporation; or
- (b) in any other case, the total votes for all the lots affected by the owners corporation.

Example

A unanimous resolution is required under the **Subdivision Act 1988** to dispose of all or part of the common property.

96 What is a special resolution?

A special resolution of an owners corporation is a resolution passed by—

- (a) if a ballot or poll is taken, 75% of the total lot entitlements of all the lots affected by the owners corporation; or
- (b) in any other case, 75% of the total votes for all the lots affected by the owners corporation.

Example

A special resolution is required to make, amend or revoke the rules of the owners corporation.

97 Interim special resolutions

(1) If, at a meeting or by ballot, the vote in favour of a matter requiring a special resolution is at least 50% of the total votes for all lots affected by the owners corporation and the vote against the resolution is not more than 25% of those votes, the resolution is to be taken to be passed as an interim special resolution.

(1A) In addition to subsection (1), if at a general meeting of the owners corporation the total votes in favour of a matter requiring a special resolution do not otherwise meet the requirements of section 96 but—

**S. 97(1A)
inserted by
No. 4/2021
s. 44.**

(a) there is a quorum for the general meeting;
and

(b) there are no votes against the resolution—
the resolution is taken to be passed as an interim special resolution.

(2) If the interim special resolution is passed at a meeting, notice of the interim special resolution and the minutes of the meeting at which the interim special resolution was passed must be forwarded to all lot owners within 14 days of the meeting.

(3) If the interim special resolution is passed by ballot, notice of the interim special resolution (including the text of the resolution) must be forwarded to all lot owners within 14 days of the close of the ballot.

(4) The notice under subsection (2) or (3) must state that the interim special resolution will become a

special resolution at the end of 29 days after it was passed unless lot owners who hold more than 25% of the total votes for all the lots affected by the owners corporation petition the secretary against the resolution.

- (5) An interim special resolution becomes a special resolution of the owners corporation on the day that is 29 days after the day the interim special resolution was passed unless lot owners who hold more than 25% of the total votes for all the lots affected by the owners corporation petition the secretary against the resolution.

Note

The effect of subsection (5) is that an interim special resolution cannot be acted on for 29 days after it is passed and cannot be acted on at all if a petition is received by the secretary within that 29-day period.

Division 8—Office-holders

98 Chairperson of owners corporation

- (1) If an owners corporation does not have a committee, the lot owners must elect a member to be the chairperson of the owners corporation.
- (2) If an owners corporation has a committee, the chairperson of the committee is also the chairperson of the owners corporation.
- (3) A chairperson elected by the lot owners of an owners corporation under subsection (1) may be removed by resolution at a general meeting.

99 Secretary

- (1) If an owners corporation does not have a committee, the lot owners may elect a member to be the secretary of the owners corporation.

S. 98(3)
inserted by
No. 1/2010
s. 31.

- (2) If an owners corporation has a committee, the secretary of the committee is also the secretary of the owners corporation.

Note

See section 107.

**Note to
s. 99(2)
inserted by
No. 1/2010
s. 32(1).**

- (2A) A secretary elected by the lot owners of an owners corporation under subsection (1) may be removed by resolution at a general meeting.
- (3) If at any time there is not a secretary of the owners corporation or the secretary is absent, the functions of the secretary under this Act may be carried out by—
- (a) in the case of a function under section 127, the chairperson of the owners corporation;
and
 - (b) in any other case, the manager of the owners corporation.

**S. 99(2A)
inserted by
No. 1/2010
s. 32(2).**

Part 5—Committees

100 Election of committee

S. 100(1)
amended by
No. 4/2021
s. 45(a).

(1) An owners corporation affecting 10 or more lots must elect a committee at each annual general meeting.

S. 100(2)
amended by
No. 4/2021
s. 45(b).

(2) An owners corporation affecting less than 10 lots may elect a committee at an annual general meeting.

S. 101
substituted by
No. 36/2011
s. 8.

101 Functions and powers of committee

Subject to the rules of the owners corporation, a committee has all the powers and functions that are delegated to it by or under section 11.

Note

Powers and functions that require a unanimous resolution, a special resolution or a resolution at a general meeting of the owners corporation cannot be delegated under section 11.

102 Delegation by committee

(1) A committee may by instrument delegate any of its powers and functions to—

- (a) the manager; or
- (b) a lot owner.

(2) A committee may by instrument sub-delegate a power or function delegated to the committee to a member of the committee.

103 Membership of committees

S. 103(1)
amended by
No. 4/2021
s. 46(1).

(1) A committee of an owners corporation must have at least 3 and not more than 7 members.

S. 103(1A)
inserted by
No. 4/2021
s. 46(2).

(1A) Despite subsection (1), the owners corporation, by ordinary resolution, may resolve that the committee may have more than 7 members but not more than 12 members.

- (2) The members of the committee must be lot owners or hold proxies on behalf of lot owners.
- (3) There must not be more than one member of the committee from any one lot.
- (4) A lot owner or a proxy for a lot owner may nominate for election as a member of the committee—
 - (a) in writing; or
 - (b) orally if the lot owner is present at the annual general meeting.
- (5) Subject to this Act and the regulations, the members of the committee hold office from their election until a new committee is elected.
- (6) The owners corporation may at an annual general meeting or special general meeting resolve to add or remove a committee member or replace or remove a committee.
- (7) If a lot owner is in arrears for any amount of fees or other amount owing to the owners corporation—
 - (a) the lot owner or a proxy for the lot owner is not eligible to be elected as a member of the committee; and
 - (b) if the lot owner or a proxy for a lot owner is a member of the committee at the time the amount came into arrears, the lot owner or the proxy for the lot owner is suspended as a member of the committee until the amount is paid.

S. 103(7)(b)
amended by
No. 4/2021
s. 46(3).

104 Casual vacancies on a committee

- (1) A casual vacancy is a vacancy that occurs between annual general meetings.

- (2) If there is a casual vacancy on a committee, the remaining members of the committee may—
 - (a) co-opt another lot owner or a person holding a proxy for a lot owner to be a member of the committee; or
 - (b) if there are 3 or more remaining members, proceed without filling the vacancy.

S. 105
amended by
No. 1/2010
s. 34 (ILA
s. 39B(1)).

105 Chairperson of committee

- (1) The members of the committee must appoint a member of the committee to be the chairperson.
- (2) An appointment as chairperson under subsection (1)—
 - (a) is to be conducted by means of a majority vote;
 - (b) may be revoked by means of a majority vote.
- (3) If a person's appointment as chairperson of a committee is revoked under subsection (2)(b), that revocation does not affect the person's membership of the committee.

S. 105(2)
inserted by
No. 1/2010
s. 34.

S. 105(3)
inserted by
No. 1/2010
s. 34.

106 Acting chairperson

- (1) The members of the committee may appoint a member of the committee to act as chairperson in the event that the chairperson is absent or unable to act.
- (2) The acting chairperson has all the powers and functions of the chairperson while acting as the chairperson.

S. 107
amended by
Nos 2/2008
s. 17, 1/2010
s. 35 (ILA
s. 39B(1)).

107 Secretary of committee

- (1) The members of the committee must appoint a member of the committee or the manager of the owners corporation to be the secretary of the committee.

- (2) An appointment as secretary of the committee under subsection (1)—
- (a) is to be conducted by means of a majority vote;
 - (b) may be revoked by means of a majority vote.
- (3) If a person's appointment as secretary of the committee is revoked under subsection (2)(b) and that person is a lot owner, that revocation does not affect the person's membership of the committee.

S. 107(2)
inserted by
No. 1/2010
s. 35.

S. 107(3)
inserted by
No. 1/2010
s. 35.

108 How can a meeting of a committee be called?

A meeting of a committee may be called by—

- (a) the chairperson of the committee; or
- (b) the secretary of the committee; or
- (c) a resolution of the owners corporation; or
- (d) a resolution of the committee; or
- (e) the manager of the owners corporation; or
- (f) a delegate of the owners corporation.

Note

See section 11 for power to delegate.

109 Notice of meetings

- (1) The secretary must give notice of a meeting of the committee to the members of the committee.

Note

The **Electronic Transactions (Victoria) Act 2000** enables this notice to be given electronically.

Note to
s. 109(1)
inserted by
No. 4/2021
s. 47.

- (2) The notice must be given—
- (a) at least 3 business days before the meeting;
or

S. 109(2)(a)
amended by
No. 1/2010
s. 36(a).

(b) as determined by the owners corporation.

(3) The notice must set out—

(a) the time and place of the meeting; and

(b) the Agenda for the meeting; and

S. 109(3)(b)
amended by
No. 1/2010
s. 36(b).

(c) the minutes of the previous meeting; and

S. 109(3)(c)
inserted by
No. 1/2010
s. 36(c) (as
amended by
No. 63/2010
s. 26).

(d) a statement that a member of the committee
who is a lot owner may appoint a proxy for
the purpose of the meeting.

S. 109(3)(d)
inserted by
No. 1/2010
s. 36(c) (as
amended by
No. 63/2010
s. 26).

110 Co-opted members

A committee may co-opt any member of a sub-committee to assist the committee in carrying out its functions.

111 Ballots

(1) A ballot held by a committee must be held in accordance with this section.

(2) The chairperson or the secretary must give notice in writing of the ballot to each member of the committee.

S. 111(2)
substituted by
No. 4/2021
s. 48.

Note

The **Electronic Transactions (Victoria) Act 2000** enables the notice to be given electronically.

- (3) The notice must state—
- (a) the resolution to be voted on by the members of the committee; and
 - (b) the closing date for the ballot, being—
 - (i) 14 days after the date of the notice; or
 - (ii) if the matter that is the subject of the ballot is urgent, less than 14 days after the date of the notice.
- (4) A resolution for which a ballot is held is passed only if a majority of the members of the committee state that they are in favour of the resolution before the closing date for the ballot.

S. 111(3)
substituted by
No. 4/2021
s. 48.

112 Proceedings of committee

- (1) The quorum for a meeting of a committee is at least half of the members of the committee.
- (2) A resolution of a committee must be made—
 - (a) by ballot; or
 - (b) by show of hands or in another prescribed manner.
- (3) Each member participating in a meeting is entitled to one vote.
- (4) A member may participate in a meeting in person or by teleconferencing in accordance with the regulations.
- (5) A person co-opted to assist the committee is not entitled to vote at a meeting.
- (6) If there is not a quorum for a meeting of a committee, the members of the committee present may make an interim resolution.
- (7) An interim resolution does not take effect unless it is confirmed—

- (a) at the next meeting at which a quorum is present; or
 - (b) by ballot under section 111; or
 - (c) in accordance with the rules.
- (8) A resolution of the committee is a resolution that a majority of the members participating in a meeting of the committee agree is a resolution of the committee.
- (9) In the event of an equality of votes, the chairperson of the committee has a second or casting vote.
- (10) A person who participates in a meeting by means of teleconferencing or another prescribed manner is to be taken to be present in person at the meeting.
- (11) Subject to this Act and the directions of the owners corporation, the committee may regulate its own proceedings.

S. 113
amended by
No. 4/2021
s. 49.

113 Resolutions of committee to be resolutions of owners corporation

A resolution of the committee of an owners corporation in respect of any matter within its functions and powers has effect as a resolution of the owners corporation.

114 Minutes

- (1) The committee must keep minutes of meetings.
- (2) The secretary is responsible for keeping the minutes at meetings of the committee.
- (3) The following must be recorded in the minutes of a meeting—
 - (a) the date, time and place of the meeting; and
 - (b) the names of the members present; and

- (c) the names of the members voting; and
 - (d) all resolutions of the committee; and
 - (e) the voting on all resolutions of the committee.
- (4) A member of the owners corporation may inspect the minutes of the committee.

115 Committee to report

The committee must present a report of its activities and the activities of any of its sub-committees to the annual general meeting of the owners corporation.

116 Sub-committees

- (1) The committee may appoint sub-committees in accordance with the rules.
- (2) The rules may provide for the role and functions of a sub-committee.
- (3) A quorum for a meeting of a sub-committee is at least half the members of the sub-committee.
- (4) Sections 105, 106, 107, 108, 109, 110, 111, 112 and 114 apply to a sub-committee as if it were a committee.

117 Duties of members of committees and sub-committees

- (1) A member of a committee or sub-committee of an owners corporation must, in the performance of the member's functions—
 - (a) act honestly and in good faith; and
 - (b) exercise due care and diligence; and
 - (c) act in the interests of the owners corporation.
- (2) A member of a committee or sub-committee of an owners corporation must not make improper use

S. 117
substituted by
No. 4/2021
s. 50.

of the member's position to gain, directly or indirectly, an advantage for the member or for any other person.

118 Immunity of committee members

- (1) A member of a committee or a sub-committee is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a person, attaches instead to the owners corporation.

Part 6—Managers

119 Appointment and removal of manager

- | | |
|--|---|
| (1) A tier one owners corporation must appoint a person to be the manager of the owners corporation. | S. 119(1)
substituted by
No. 4/2021
s. 51. |
| (1A) Despite subsection (1), a tier one owners corporation, by special resolution, may opt out of the requirement under subsection (1) to appoint a person to be the manager of the owners corporation. | S. 119(1A)
inserted by
No. 4/2021
s. 51. |
| (1B) A decision referred to in subsection (1A) may be reversed and a person may be appointed to be the manager of the owners corporation by ordinary resolution at a date later than the date of the special resolution. | S. 119(1B)
inserted by
No. 4/2021
s. 51. |
| (1C) A tier two owners corporation, a tier three owners corporation, a tier four owners corporation or a tier five owners corporation may appoint a person to be the manager of the owners corporation. | S. 119(1C)
inserted by
No. 4/2021
s. 51. |
| (1D) A person must not be appointed as the manager of an owners corporation for a period that exceeds 3 years. | S. 119(1D)
inserted by
No. 4/2021
s. 51. |
| (2) If the manager is to receive a fee or reward for carrying out the functions of manager, a person is not eligible to be appointed unless the person is a registered manager. | |
| (3) An instrument or contract of appointment must be in the approved form. | |
| (4) A manager need not be a lot owner. | |
| (5) A person must not be appointed as a manager for fee or reward unless the person holds professional indemnity insurance that is sufficient to meet claims up to a level of the prescribed amount in any one year. | |

- (6) An owners corporation may revoke the appointment of a manager.

S. 119A
inserted by
No. 4/2021
s. 52.

119A Contract of appointment of manager

- (1) A contract of appointment of the manager of an owners corporation (*contract of appointment*) must not include any of the following terms—
- (a) a term that requires the owners corporation, before revoking the appointment of the manager—
 - (i) to pass a special resolution, a unanimous resolution or any other resolution requiring more than a simple majority of votes; or
 - (ii) to convene a general meeting of the owners corporation; or
 - (iii) to take any other prescribed step;
 - (b) a term that allows the manager to renew the contract of appointment at the manager's option;
 - (c) a term requiring a tier one owners corporation or a tier two owners corporation to give 3 months or more notice of its intention to revoke the manager's appointment;
 - (d) a term requiring a tier three owners corporation, a tier four owners corporation or a tier five owners corporation to give one month or more notice of its intention to revoke the manager's appointment;
 - (e) a term providing for the automatic renewal of the contract of appointment if the owners corporation fails to give notice, in accordance with the terms of the contract, of
-

- its intention not to renew the manager's contract;
- (f) a term that restricts the ability of the owners corporation to refuse consent to an assignment of the contract of appointment to a person appointed as the manager, other than a requirement that such consent must not be unreasonably withheld by the owners corporation.
- (2) If an owners corporation fails to give notice of its intention to renew a contract of appointment, the contract of appointment is taken to have been renewed on the basis that it may be terminated by the owners corporation or the manager by giving in writing—
- (a) at least one month's notice; or
- (b) if a shorter period of notice is provided under the contract, that shorter notice—
- of the owners corporation's or manager's intention to terminate the contract of appointment.
- (3) For the purposes of subsection (1)(f), an owners corporation that withholds consent to the assignment of the contract of appointment to a person who is appointed as the manager and is a full member of a professional body or association approved by the Director is taken to unreasonably withhold consent to the assignment of the contract of appointment.

120 Functions of manager where there is a committee

- (1) If there is a committee of the owners corporation, a manager has the functions conferred on the manager by—
- (a) this Act and the regulations; and
- (b) the rules of the owners corporation; and

S. 120(1)(c)
amended by
No. 1/2010
s. 37.

(c) the owners corporation by resolution; and

(d) delegation by the owners corporation.

(2) If there is a committee of the owners corporation, the manager must report to the committee, as required by the committee, on the carrying out of the functions conferred on the manager.

S. 121
substituted by
No. 1/2010
s. 38.

121 Functions of the manager where there is no committee

If there is no committee of the owners corporation, the manager has the functions and powers that are conferred on the manager by—

- (a) this Act and any regulations made under this Act;
- (b) the rules of the owners corporation;
- (c) the owners corporation by resolution;
- (d) delegation by the owners corporation.

122 Duties of manager

(1) A manager—

- (a) must act honestly and in good faith in the performance of the manager's functions; and
- (b) must exercise due care and diligence in the performance of the manager's functions; and
- (c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person; and
- (d) must take reasonable steps to ensure that any goods or services procured by the manager on behalf of the owners corporation are procured at competitive prices and on competitive terms; and

S. 122(1)(c)
amended by
No. 4/2021
s. 53(1)(a).

S. 122(1)(d)
inserted by
No. 4/2021
s. 53(1)(b).

- (e) must not exert pressure on any member of the owners corporation in order to influence the outcome of a vote or election held by the owners corporation; and **S. 122(1)(e) inserted by No. 4/2021 s. 53(1)(b).**
- (f) before a contract is entered into for the supply of goods or services to an owners corporation under which a manager is entitled to receive a commission, payment or other benefit, must give written notice to the chairperson of the owners corporation disclosing the commission, payment or other benefit in accordance with section 122B. **S. 122(1)(f) inserted by No. 4/2021 s. 53(1)(b).**
- (2) A manager—
- (a) holds all money held on behalf of an owners corporation on trust for the owners corporation; and
- (b) if subsection (3) applies, must account separately for the money held by the manager for each owners corporation on the plan of subdivision; and **S. 122(2)(b) substituted by No. 4/2021 s. 53(2)(a).**
- (c) subject to subsection (3), must hold all money held on behalf of separate owners corporations on trust in separate bank accounts; and **S. 122(2)(c) inserted by No. 4/2021 s. 53(2)(b).**
- (d) must comply, as soon as practicable, with any reasonable request made by an owners corporation to provide copies of financial statements of bank accounts— **S. 122(2)(d) inserted by No. 4/2021 s. 53(2)(b).**
- (i) that contain money held by the manager on behalf of the owners corporation on trust; and
- (ii) for any period within 3 years immediately preceding the request.
-

S. 122(3)
inserted by
No. 4/2021
s. 53(3).

- (3) Despite subsection (2)(c), a manager may hold money on behalf of separate owners corporations on trust in the same bank account if—
- (a) each owners corporation—
 - (i) is on the same plan of subdivision; and
 - (ii) has consented to the money being held in the same account with the funds of other owners corporations; or
 - (b) the bank account is a statutory trust account held by—
 - (i) a licensed estate agent under the **Estate Agents Act 1980**; or
 - (ii) an Australian legal practitioner within the meaning of the Legal Profession Uniform Law (Victoria); or
 - (iii) a licensee under the **Conveyancers Act 2006**.

S. 122(4)
inserted by
No. 4/2021
s. 53(3).

- (4) Money held by a manager on behalf of an owners corporation on trust for the owners corporation includes any interest earned.

S. 122A
inserted by
No. 4/2021
s. 54.

122A Manager must disclose beneficial relationship with supplier

- (1) For the purposes of this section, a manager has a beneficial relationship with a supplier of goods or services if the supplier is—
- (a) the manager; or
 - (b) an associate of the manager; or
 - (c) a body corporate of which the manager, or an associate of the manager, is a member; or
 - (d) a corporation over which the manager (either individually or jointly with

- associates), or an associate of the manager, can exercise control; or
- (e) a corporation of which the manager, or an associate of the manager, is an executive officer; or
 - (f) in the case of a manager that is a corporation—an executive officer of that corporation or an associate of an executive officer of that corporation; or
 - (g) the trustee of a discretionary trust of which the manager, or an associate of the manager, is a beneficiary; or
 - (h) a member of a firm of which the manager, or an associate of the manager, is also a member.
- (2) The manager of an owners corporation must disclose any beneficial relationship with a supplier with whom a contract is proposed to be entered into for the supply of goods or services to the owners corporation.
- (3) Disclosure required under subsection (2) must—
- (a) be given by written notice to the chairperson of the owners corporation; and
 - (b) subject to subsection (4), be given—
 - (i) immediately upon the manager becoming aware that the proposed contract is with a supplier with whom the manager has a beneficial relationship; and
 - (ii) before the contract is entered into by the owners corporation.
- (4) If, because of an emergency situation, it is necessary for the manager to enter into a contract
-

for the supply of goods or services and it is not reasonably practicable for the manager to disclose a beneficial relationship in accordance with subsection (3), the manager must disclose the beneficial relationship to the chairperson of the owners corporation as soon as practicable after the contract is entered into.

- (5) A manager who fails to disclose a beneficial relationship in accordance with this section is taken to breach the duty of a manager under section 122(1)(c).
- (6) Subsection (5) does not apply if the manager—
- (a) was not, and could not have reasonably been expected to be, aware of the beneficial relationship with the supplier before the contract was entered into; and
 - (b) disclosed the beneficial relationship to the chairperson of the owners corporation immediately after becoming aware of the beneficial relationship.
- (7) In this section—
- associate**, of the manager, means—
- (a) a director of the manager; or
 - (b) an employee or agent of the manager; or
 - (c) a spouse, domestic partner, parent, brother, sister or child of the manager or the manager's representative; or
 - (d) a child of the spouse or domestic partner of the manager or the manager's representative;

control has the meaning given by section 50AA of the Corporations Act;

executive officer means any person, whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

122B Manager must disclose commission, payment or other benefit

S. 122B
inserted by
No. 4/2021
s. 54.

- (1) This section applies to a contract for the supply of goods or services to an owners corporation under which the manager of the owners corporation is entitled to receive (other than from the owners corporation) a commission, payment or other benefit.
- (2) Before a contract under subsection (1) is entered into, the manager must disclose, by written notice, to the chairperson of the owners corporation the commission, payment or other benefit to be received under the contract.
- (3) If the contract is an insurance contract and the commission that the manager is entitled to receive is a percentage of the premium payable under the contract, the manager must disclose, by written notice, to the chairperson of the owners corporation the percentage of the premium rather than the actual amount of the commission.
- (4) If the contract under subsection (3) is renewed and the percentage of the premium that the manager is entitled to receive increases, the manager must make further disclosures of the percentage of the premium by written notice to the chairperson of the owners corporation.
- (5) A manager who fails to make a disclosure required under this section is taken to breach the duty of a manager under section 122(1)(f).

123 Immunity of volunteer manager

- (1) A member of an owners corporation who carries out the duties of a manager of the owners corporation (without fee or reward) is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that but for subsection (1), would attach to a person, attaches instead to the owners corporation.

124 Delegation

A manager may delegate to an employee of the manager any function conferred on the manager including a function conferred by delegation.

125 VCAT may appoint manager

If an owners corporation has not appointed a manager, a lot owner or a mortgagee of a lot may apply to VCAT for an order appointing a manager of the owners corporation.

126 Report

- (1) The manager of an owners corporation must submit a report of all money held on behalf of the owners corporation by the manager on trust and any disbursement of that money to each annual general meeting of the owners corporation.
- (2) The report must include—

S. 126(1)
amended by
No. 4/2021
s. 55(1).

S. 126(2)
substituted by
No. 4/2021
s. 55(2).

- (a) details of the professional indemnity insurance held by the manager in compliance with section 119(5); and
 - (b) details of receipts and disbursements of money held on behalf of the owners corporation by the manager on trust in the relevant year, unless those details are included in the relevant financial statements prepared under section 34; and
 - (c) the amounts of any commissions, payments or other benefits received by the manager in relation to contracts for goods or services supplied to an owners corporation during the relevant year.
- (3) For the purposes of subsection (2)(c), if the specific amount of a commission, payment or other benefit cannot be reasonably ascertained, the manager must include in the report an estimate of the amount.

S. 126(3)
inserted by
No. 4/2021
s. 55(3).

127 Manager to return records

A manager of an owners corporation must, within 28 days of termination of appointment as manager, return to the secretary of the owners corporation all records relating to the owners corporation or funds of the owners corporation held or controlled by the manager.

Penalty: 60 penalty units.

Part 7—Duties and rights of lot owners and occupiers

128 Compliance with laws

A lot owner must comply with this Act, the regulations under this Act and the rules of the owners corporation.

129 Care of lots

A lot owner must—

- (a) properly maintain in a state of good and serviceable repair any part of the lot that affects the outward appearance of the lot or the use or enjoyment of other lots or the common property; and
- (b) maintain any service that serves that lot exclusively.

130 Care of common property

A lot owner must not use or neglect the common property or permit it to be used or neglected in a manner that is likely to cause damage or deterioration to the common property.

131 Overhanging eaves

If a boundary of a lot that bisects a roof is located at any location other than the internal face of the walls of the building, the lot owner is responsible for the maintenance of any eaves and guttering that overhang the boundary of the lot.

132 Right to decorate interior walls, floors and ceilings

- (1) If a boundary of a lot is shown on a plan of subdivision as being the interior face of the building, the lot owner has the right to decorate or attach fixtures or chattels to that face.

- (2) This section permits works such as curtaining, painting, wallpapering and installing floor coverings, light fittings and other chattels.

133 Notice of planning and building applications and plans of subdivision

A lot owner must give notice to the owners corporation of any application by the lot owner for a building permit or planning permit or the certification of a plan of subdivision affecting the lot.

134 Address of new owners

- (1) A lot owner who sells a lot must advise the owners corporation of the name and address of the new owner within one month of the completion of the contract.
- (2) A person who acquires a lot must advise the owners corporation of the person's name and address within one month of the completion of the contract.

135 Address of absent owners

- (1) A lot owner who does not occupy the lot or who will be absent from the lot for more than 3 months must advise the owners corporation of the lot owner's mailing address in Australia for service of notices and any changes to it as soon as possible.
- (2) If an address in Australia has not been nominated under subsection (1), service may be effected—
- (a) by posting the notice to the last known address of the lot owner in Australia; or

S. 135
amended by
No. 36/2011
s. 9(2) (ILA
s. 39B(1)).

S. 135(1)
amended by
No. 36/2011
s. 9(1).

S. 135(2)
inserted by
No. 36/2011
s. 9(2).

- (b) if an address under paragraph (a) is not known or if a notice sent to that address is returned, in any other manner VCAT considers appropriate.

Note to
s. 135(2)
substituted by
No. 4/2021
s. 56.

Note

See section 148.

136 Advice to occupiers

A lot owner who does not occupy his or her lot must give the occupier of the lot—

- (a) copy of the rules of the owners corporation at the commencement of occupation; and
- (b) copy of the consolidated rules of the owners corporation as soon as possible after it is lodged with the Registrar.

137 Duties of occupiers of lots

An occupier of a lot—

- (a) must comply with this Act and the regulations under this Act and the rules of the owners corporation; and
- (b) must not use or neglect the common property or permit it to be used or neglected in a manner that is likely to cause damage or deterioration to the common property.

Part 8—Rules of the owners corporation

138 Power to make rules

- (1) By special resolution, an owners corporation may make rules for or with respect to any matter set out in Schedule 1.
- (2) By special resolution, an owners corporation may amend or revoke any rules made under subsection (1).
- (3) A rule must be for the purpose of the control, management, administration, use or enjoyment of the common property or of a lot.

Note

Rules may be made on the registration of the relevant plan under Part 5 of the **Subdivision Act 1988**. See section 27E.

138A Power to make rules regarding proxies

S. 138A
inserted by
No. 36/2011
s. 10.

- (1) Subject to subsection (2), an owners corporation may make a rule requiring that a majority of the members of the committee of the owners corporation consent to a proxy of a member (authorised under section 89C) voting at committee meetings.
- (2) A rule made under subsection (1) only applies if the proxy-holder has not been elected or co-opted as a member of the committee.
- (3) If a rule under subsection (1) is in effect, the consent must not be unreasonably withheld.

S. 138A(1)
amended by
No. 4/2021
s. 57.

138B Power to make rules regarding external alterations and other works affecting lot owners

S. 138B
inserted by
No. 4/2021
s. 58.

- (1) Subject to subsection (2), an owners corporation may make rules in respect of proposed works to

renovate or alter the external appearance of a lot—

- (a) to protect the quiet enjoyment of all other lots and the common property during those works; and
 - (b) to protect the structural integrity of any building on the plan of subdivision from those works; and
 - (c) to ensure the market value of any other lot does not decrease as a result of those works.
- (2) An owners corporation must not make rules that unreasonably prohibit the installation of sustainability items on the exterior of a lot.
- (3) For the purposes of subsection (2)—
- (a) a prohibition on the installation of a sustainability item only on aesthetic grounds is taken to be unreasonable; and
 - (b) a requirement that the location of, or the works involved in installing, the sustainability item must not impede reasonable access to, or the use of, any other lot or the common property is taken to be reasonable.
- (4) In this section—
- sustainability item*** means any thing that eliminates or reduces a reliance on non-sustainable energy sources and includes—
- (a) a solar hot water system; and
 - (b) solar energy panels; and
 - (c) a roof with colours having a particular solar absorption value.

139 Model rules

- (1) The regulations may prescribe model rules in relation to any matter in respect of which rules can be made.
- (2) If the owners corporation does not make any rules or revokes all of its rules, then the model rules apply to it.
- (3) If the model rules provide for a matter and the rules of the owners corporation do not provide for that matter, the model rules relating to that matter are deemed to be included in the rules of the owners corporation.

140 Rules to be of no effect if inconsistent with law

A rule of an owners corporation is of no effect if it—

- (a) is oppressive to, unfairly prejudicial to or unfairly discriminates against, a lot owner or an occupier of a lot; or
- (b) is inconsistent with or limits a right or avoids an obligation under—
 - (i) this Act; or
 - (ii) the **Subdivision Act 1988**; or
 - (iii) the regulations under this Act; or
 - (iv) the regulations under the **Subdivision Act 1988**; or
 - (v) any other Act or regulation.

S. 140(a)
substituted by
No. 4/2021
s. 59.

141 Who is bound by the rules?

The rules of an owners corporation are binding on—

- (a) the owners corporation;
- (b) the lot owners;

- (c) any lessee or sub-lessee of a lot;
- (d) any occupier of a lot.

S. 141A
inserted by
No. 4/2021
s. 60.

141A Occupier to ensure guests comply with rules

- (1) An occupier of a lot (including a lot owner or a lessee of a lot) must ensure that any guest to the lot complies with the rules of the owners corporation.
- (2) If a guest to a lot breaches the rules of the owners corporation, the occupier of the lot and the guest are jointly and severally liable for satisfying any penalty or compensation payable as a consequence of the guest's breach.
- (3) Despite subsection (2), an occupier of a lot is not liable for a guest's breach if the occupier of the lot provides the guest with a copy of the rules of the owners corporation.
- (4) Nothing in subsection (3) prevents an owners corporation from taking action in respect of an alleged breach by a short-stay occupant under section 159D or affects the operation of section 169H.

142 Recording of rules

- (1) If an owners corporation makes rules under this Act, the owners corporation must lodge with the Registrar a copy of the rules that has been certified by the secretary of the owners corporation.
- (2) If an owners corporation amends any rules under this Act, the owners corporation must lodge with the Registrar a consolidated copy of the rules

(incorporating the amendment) that has been certified by the secretary of the owners corporation.

- (3) The Registrar must record the rules in the Register kept under the **Transfer of Land Act 1958**.
- (4) A rule takes effect—
 - (a) on the day that the rule is recorded by the Registrar in the Register; or
 - (b) on a later date specified in the rules.
- (5) An amendment to a rule takes effect—
 - (a) on the day that the consolidated rules (incorporating the amendment) is recorded by the Registrar in the Register; or
 - (b) on a later date specified in the consolidated rules.

143 Rules to be given to lot owners

An owners corporation must ensure that—

- (a) a copy of the rules of the owners corporation is given to each lot owner as soon as practicable after the rules are lodged with the Registrar; and
- (b) if the rules are amended, a copy of the consolidated rules (incorporating the amendment) is given to each lot owner as soon as practicable after the consolidated rules are lodged with the Registrar.

Pt 8A
(Heading and
ss 143A–
143F)
inserted by
No. 4/2021
s. 61.

Part 8A—Retirement villages

S. 143A
inserted by
No. 4/2021
s. 61.

143A Application

- (1) This Part applies to an owners corporation incorporated in respect of land used or to be used for the purposes of a retirement village within the meaning of the **Retirement Villages Act 1986**.
- (2) A term used in this Part that is defined in section 3(1) of the **Retirement Villages Act 1986** has the same meaning given by that subsection.

S. 143B
inserted by
No. 4/2021
s. 61.

143B Fees

- (1) Despite Division 7 of Part 4, the owner of retirement village land used or to be used for the purposes of a retirement village, or a close associate of the owner, who has a majority of lot entitlements of the owners corporation is not entitled to vote on—
 - (a) a resolution levying annual fees under section 23; or
 - (b) a special resolution levying extraordinary fees and charges under section 24.

Note

Under section 3(1) of the **Retirement Villages Act 1986**, *retirement village land* does not include land in respect of which residence rights are estates in fee simple (i.e. land occupied by a resident as a private residence).

- (2) In the case of a special resolution referred to in subsection (1)(b), any reference in Division 7 of Part 4 to the total lot entitlements of all the lots affected by the owners corporation is to be read as

a reference to those lot entitlements excluding the lot entitlements of the owner.

143C Maintenance fees

Section 42(2) does not apply if maintenance charges within the meaning of the **Retirement Villages Act 1986** are collected as part of the exit fees to be paid by residents of a retirement village.

S. 143C
inserted by
No. 4/2021
s. 61.

143D Obligation of initial owner of retirement village land

Section 68(4A)(a) does not apply to an initial owner of retirement village land affected by an owners corporation or an associate of the initial owner.

S. 143D
inserted by
No. 4/2021
s. 61.

143E Appointment of the manager of an owners corporation

Despite section 119(1D), an owners corporation under this Part may appoint a person as the manager of an owners corporation for a period exceeding 3 years (but not exceeding 5 years).

S. 143E
inserted by
No. 4/2021
s. 61.

143F Rules of owners corporation of retirement villages

- (1) Despite section 138(1) and (2), the rules of an owners corporation under this Part may only be made, amended or revoked by special resolution passed in accordance with the **Retirement Villages Act 1986**.
- (2) At a meeting of the residents of the retirement village at which a special resolution is being considered, the manager of the owners corporation or the owner of retirement village land must not—
 - (a) participate in the consideration of the special resolution, except to the extent resolved by the residents present at the meeting; or
 - (b) vote on the special resolution.

S. 143F
inserted by
No. 4/2021
s. 61.

- (3) Subsection (2) does not prevent the manager or the owner convening a meeting of the residents of the retirement village to consider the making, amendment or revocation of the rules of the owners corporation.

Part 9—Records

Division 1—Keeping of records

144 Keeping of records

An owners corporation must keep the following records in respect of the owners corporation—

- (a) the full name and address of each lot owner;
- (b) a consolidated copy of the rules;
- (c) minutes of meetings;
- (d) copies of resolutions;
- (e) records of the results of ballots;
- (f) proxies;
- (g) voting papers or ballots;
- (h) correspondence;
- (i) accounting records;
- (j) records of assets and liabilities;
- (k) financial statements;
- (l) income tax returns of the owners corporation and GST records (if any);
- (m) insurance policies;
- (n) maintenance plans;
- (o) notices and orders served on the owners corporation by a court or tribunal or under an Act;
- (p) notices served by the owners corporation, including notices under Part 10;
- (q) contracts and agreements entered into by the owners corporation;

- (r) leases and licences to the owners corporation;
- (s) leases and licences from the owners corporation.

145 How long must records be kept?

- (1) An owners corporation must keep voting papers and ballots for 12 months after the vote or ballot is taken.
- (2) An owners corporation must keep proxies for 12 months after they expire or are revoked.
- (3) An owners corporation must keep all other documents of a kind set out in section 144 for at least 7 years.

146 Availability of records

- (1) The owners corporation, on request by a lot owner, a mortgagee of a lot, a purchaser of a lot or the representative of a lot owner or mortgagee or purchaser of a lot, must make the records of the owners corporation required to be kept under this Division available to that person for inspection at any reasonable time, free of charge.
- (2) The owners corporation must at the request of a person entitled to inspect the records and on payment of a reasonable fee provide a copy of any record of the owners corporation.
- (3) A fee determined by the owners corporation for the purposes of this section must not exceed the prescribed maximum fee.

S. 146(2)
amended by
No. 4/2021
s. 62.

Division 2—Owners corporation register

147 Owners corporation register

- (1) The applicant for registration of a plan of subdivision that provides for the creation of an

owners corporation must establish an owners corporation register.

- (2) An owners corporation existing on the date of commencement of this section must establish an owners corporation register within the time prescribed by the regulations.
- (3) An owners corporation must maintain the owners corporation register.

148 What must be kept on the owners corporation register?

Subject to the regulations, the following must be kept on the owners corporation register—

- (a) the owners corporation plan number and address;
- (b) the name and address of each lot owner;
- (c) the name of the manager, registration number of the manager and contact details of the manager (if any);
- (d) total lot liability and total lot entitlements;
- (e) lot liability and lot entitlements for each lot affected by the owners corporation;
- (f) the basis for the setting of lot liability and lot entitlement (if available);
- (g) the date of each amendment to the owners corporation rules and the date of the recording of the consolidated rules (incorporating the amendment) in the Register kept under the **Transfer of Land Act 1958**;
- (h) details of any notices or orders served on the owners corporation by a court or tribunal or under an Act;

- (i) details of contracts, leases and licences entered into by the owners corporation;
- (j) details of the insurance policies taken out by the owners corporation including—
 - (i) the name of the insurance company;
 - (ii) the number of the insurance policy;
 - (iii) the nature of the risk insured;
 - (iv) the amount of insurance;
 - (v) the due date of the premium;
 - (vi) the date that the premium was last paid.

149 In what form must the register be kept?

The owners corporation register must be kept in a form that is readily accessible and convertible into writing in the English language.

Note

An owners corporation register can be kept in an electronic form.

150 Availability of register

- (1) The owners corporation, on request by a lot owner, a mortgagee of a lot or a purchaser of a lot or the representative of a lot owner or a mortgagee or a purchaser of a lot, must make the owners corporation register available to that person for inspection at any reasonable time, free of charge.
- (2) The owners corporation must at the request of a person entitled to inspect the owners corporation register and on payment of a reasonable fee provide a copy of the register or any part of the register of the owners corporation.

S. 150(2)
amended by
No. 1/2010
s. 39.

S. 150(2A)
inserted by
No. 4/2021
s. 63.

- (2A) A lot owner must not authorise a representative who is not a lot owner to request a copy of the register or any part of the register under

subsection (2) for a commercial purpose without the prior consent of the owners corporation.

- (3) A fee determined by the owners corporation for the purposes of this section must not exceed the prescribed maximum fee.

Division 3—Owners corporation certificate

151 Owners corporation certificate

- (1) Any person may apply to the owners corporation for an owners corporation certificate.
- (2) The application must be in writing and must be accompanied by the fee determined by the owners corporation, which must not exceed the relevant prescribed fee.

S. 151(2)
amended by
Nos 2/2008
s. 18, 33/2014
s. 7(1).

Note

The **Electronic Transactions (Victoria) Act 2000** enables this application to be made electronically.

- (3) The owners corporation must issue an owners corporation certificate within 10 business days after it receives an application and fee under this section.
- (4) An owners corporation certificate must—
- (a) contain the prescribed information relating to the owners corporation and a lot which must include the prescribed information relating to—
- (i) fees payable in respect of the lot;
 - (ii) fees and charges that are imposed or proposed to be imposed on the lot;
 - (iii) fees and other money owing in respect of the lot;
 - (iv) insurance;

- (v) repairs and maintenance;
 - (vi) the funds held by the owners corporation;
 - (vii) liabilities and contingent liabilities of the owners corporation including any liabilities or contingent liabilities arising from legal proceedings;
 - (viii) contracts, leases, licences and agreements affecting the common property;
 - (ix) services provided to lot owners and occupiers and the public;
 - (x) notices and orders served on the owners corporation;
 - (xi) legal proceedings to which the owners corporation is a party;
 - (xii) the manager;
 - (xiii) any appointment of an administrator; and
- (b) be accompanied by—
- (i) a copy of the rules, or, if the rules have been amended the consolidated rules of the owners corporation as recorded on the Register; and
 - (ii) a statement in the prescribed form providing advice and information to prospective purchasers and lot owners; and
 - (iii) a copy of all resolutions made at the last annual general meeting of the owners corporation; and
 - (iv) any other documents of a prescribed kind; and

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(v) a statement advising that further information on prescribed matters can be obtained by inspection of the owners corporation register.

* * * * *

S. 151(4)(b)(v)
amended by
Nos 1/2010
s. 40(1),
4/2021
s. 64(a).
S. 151(4)(c)
inserted by
No. 1/2010
s. 40(2),
repealed by
No. 4/2021
s. 64(b).

(5) The owners corporation must not charge a person making an application under this section a fee in excess of the relevant prescribed fee for the issue of an owners corporation certificate.

S. 151(5)
inserted by
No. 33/2014
s. 7(2).

Penalty: 60 penalty units.

Part 10—Dispute resolution

Division 1—Complaints and procedures

152 Complaints

- (1) A lot owner or an occupier of a lot or a manager may make a complaint to the owners corporation about an alleged breach by a lot owner or an occupier of a lot or a manager of an obligation imposed on that person by this Act or the regulations or the rules of the owners corporation.
- (2) A complaint must be made in writing in the approved form.
- (3) An owners corporation must make a copy of the approved form available at the request of a person who wishes to make a complaint under this section.
- (4) A complaint cannot be made under this section in relation to a personal injury or the recovery of any fees, charges, contribution or amount owing to an owners corporation under section 28.

S. 152(4)
amended by
No. 4/2021
s. 65.

153 Decision whether to take action in respect of alleged breach

- (1) This section applies if—
 - (a) a complaint is made under section 152; or
 - (b) it otherwise comes to the attention of the owners corporation that a lot owner or an occupier of a lot or a manager may have breached this Act or the regulations or the rules of the owners corporation.

S. 153(1A)
inserted by
No. 4/2021
s. 66(1).

- (1A) This section does not apply to the recovery of any fees, charges, contribution or amount owing to an owners corporation under section 28.

Note

Division 1 of Part 3 applies to recovery of fees and other amounts.

- (2) The owners corporation must decide—
- (a) to take action under this Part in respect of the alleged breach; or
 - (b) to apply to VCAT for an order requiring the person to rectify the alleged breach; or S. 153(2)(b) amended by No. 4/2021 s. 66(2).
 - (c) to take no action in respect of the alleged breach.
- (3) An owners corporation must not take action under this Part or apply to VCAT for an order in relation to a complaint made under section 152 unless— S. 153(3) amended by No. 4/2021 s. 66(3).
- (a) the dispute resolution process required by the rules has first been followed; and
 - (b) the owners corporation is satisfied that the matter has not been resolved through that process.
- (4) The owners corporation must not take action against a person under this Part or apply to VCAT for an order in respect of an alleged breach unless it believes on reasonable grounds that the person has committed the alleged breach.
- (5) A decision under this Part cannot prevent the carrying out of an obligation under section 46 or 47 that is necessary to ensure safety or to prevent significant loss or damage.

154 Notice of decision not to take action

- (1) If an owners corporation decides not to take action under this Part or to apply to VCAT for an order in respect of an alleged breach, it must give notice
-

of the decision to any person who made a complaint under section 152 in respect of the alleged breach.

- (2) The notice must set out the reasons for the decision.

155 Notice to rectify breach

- (1) If the owners corporation decides to take action under this Part in respect of an alleged breach, it must give notice of the allegation to the person alleged to have committed the breach.
- (2) A notice must specify the alleged breach and require the person to whom the notice is given to rectify the breach within 28 days after the date of the notice.
- (3) A notice under this section must be in writing in the approved form.
- (4) If the person alleged to have committed the breach is an occupier of a lot affected by the owners corporation, the owners corporation must give a copy of the notice to the lot owner.

156 What if the person does not rectify the breach?

- (1) If the person to whom notice is given under section 155 does not rectify the breach within 28 days after the date of the notice under section 155, the owners corporation may decide—
 - (a) to give the person more time to comply with the notice; or
 - (b) to give the person a final notice; or
 - (c) not to proceed with the action under this Part.
- (2) If the owners corporation decides to give the person more time to comply with the notice under section 155, it must give the person notice of that

decision setting out the additional time for compliance.

- (3) If the owners corporation gives a person more time to comply with the notice under section 155 and the person does not comply within that time, the owners corporation may decide—
 - (a) to give the person a final notice; or
 - (b) not to proceed with the action under this Part.
- (4) The owners corporation must give notice of its decision under this section to—
 - (a) any person who made a complaint in respect of the alleged breach under section 152; and
 - (b) the person to whom the notice was given under section 155.

157 Final notice

- (1) If the owners corporation decides to give a final notice, the notice must—
 - (a) be in writing in the approved form; and
 - (b) state that the person must within 28 days after the date of the notice rectify the breach; and
 - (c) state that if the breach is not rectified within that time, the owners corporation may decide to apply to VCAT for an order requiring the rectification of the breach.
- (2) If the person who is given a final notice fails to rectify the breach within the required time, the owners corporation may decide—
 - (a) to apply to VCAT for an order requiring the rectification of the breach; or

- (b) to take no further action in respect of the breach.
- (3) The owners corporation must give notice of its decision under this section to—
 - (a) the person to whom the notice was given under subsection (1); and
 - (b) any person who made a complaint under section 152 in respect of the alleged breach.

Note

See Part 11 for applications to VCAT.

158 How may notice be given?

A notice given by an owners corporation under this Part may be given to a person—

- (a) by post addressed to the person at the address of the lot, if the person is the occupier of a lot; or
- (b) by leaving it personally with the person; or
- (c) by leaving it in the form of a letter in the letterbox for the lot; or
- (d) by leaving it with an occupier of the lot who is apparently over the age of 16 years; or
- (e) if the person is not the occupier of the lot, by post to any address the person has provided to the owners corporation as the address for the service of notices.

Note to s. 158
inserted by
No. 4/2021
s. 67.

Note

The **Electronic Transactions (Victoria) Act 2000** enables notice to be given electronically.

159 Report to annual general meeting

- (1) The owners corporation must report to the annual general meeting in relation to—
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- (a) the number of complaints made under this Division; and
 - (b) the nature of the complaints; and
 - (c) the number of matters on which action was taken under this Division; and
 - (d) the nature of the matters in respect of which action was taken; and
 - (e) the number of matters in respect of which an application was made to VCAT in respect of an alleged breach of an obligation imposed on a lot owner or occupier of a lot by this Act or the regulations or the rules of the owners corporation; and
 - (f) the nature of the matters referred to in paragraph (e); and
 - (g) the outcome of each action or application.
- (2) The report must not identify the person who made a complaint or the lot owner or occupier alleged to have committed the breach.

**Division 1A—Complaints and procedures—
short-stay accommodation arrangements**

Pt 10 Div. 1A
(Heading and
ss 159A–
159F)
inserted by
No. 34/2018
s. 5.

**159A Complaints—short-stay accommodation
arrangements**

S. 159A
inserted by
No. 34/2018
s. 5.

- (1) An owner of a lot, an occupier of a lot or a manager may make a complaint to the owners corporation about an alleged breach by a short-stay occupant of the conduct proscriptions applying to short-stay accommodation arrangements.

- (2) For the purposes of subsection (1), a short-stay occupant breaches a conduct proscription applying to a short-stay accommodation arrangement by engaging in any of the following conduct—
- (a) unreasonably creating any noise likely to substantially interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot (other than the making of noise where the owners corporation has given written permission for that noise to be made);
 - (b) behaving in a manner likely to unreasonably and substantially interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot;
 - (c) using a lot or the common property, or permitting a lot or the common property to be used, so as to cause a substantial hazard to the health, safety and security of any person or an occupier;
 - (d) unreasonably and substantially obstructing the lawful use and enjoyment of the common property by an occupier or a guest of an occupier;
 - (e) substantially damaging or altering—
 - (i) a lot or the common property, intentionally or negligently; or
 - (ii) a structure that forms part of a lot or the common property, intentionally or negligently.
- (3) A complaint must be made in writing in the approved form.
- (4) An owners corporation must make a copy of the approved form available at the request of a person

who wishes to make a complaint under this section.

- (5) A complaint cannot be made under this section in relation to a personal injury.

159B Decision whether to take action in respect of alleged breach by a short-stay occupant

S. 159B
inserted by
No. 34/2018
s. 5.

- (1) This section applies if—
- (a) a complaint is made under section 159A; or
 - (b) it otherwise comes to the attention of the owners corporation that a short-stay occupant has breached a conduct proscription specified in section 159A(2).
- (2) The owners corporation must decide—
- (a) to take action under this Part in respect of an alleged breach by a short-stay occupant; or
 - (b) to take no action in respect of the alleged breach.
- (3) The owners corporation must not take action under this Part in respect of an alleged breach by a short-stay occupant unless it believes on reasonable grounds that the short-stay occupant has committed the alleged breach.
- (4) A decision under this Part cannot prevent the carrying out of an obligation under section 46 or 47 that is necessary to ensure safety or to prevent significant loss or damage.

159C Notice of decision not to take action—short-stay accommodation arrangement complaint

S. 159C
inserted by
No. 34/2018
s. 5.

- (1) If an owners corporation decides not to take action under this Part in respect of an alleged breach by a short-stay occupant, it must give notice of the decision to any person who made a complaint

under section 159A in respect of the alleged breach.

- (2) The notice must set out the reasons for the decision.

S. 159D
inserted by
No. 34/2018
s. 5.

159D Notice to rectify breach—short-stay accommodation arrangement complaint

- (1) If an owners corporation decides to take action under this Part in respect of an alleged breach by a short-stay occupant, the owners corporation—
- (a) must give notice of the allegation to the lot owner and the short-stay provider (if the short-stay provider is not the lot owner); and
 - (b) may give notice of the allegation to the short-stay occupant.
- (2) A notice must specify the alleged breach and state that—
- (a) the person to whom the notice is given is required to rectify the breach if this has not been done so already; and
 - (b) in any case, the owners corporation may decide to apply to VCAT to resolve a short-stay accommodation dispute in relation to the breach and may seek one or more of the following orders—
 - (i) a prohibition order under section 169D;
 - (ii) an order for a civil penalty under section 169G;
 - (iii) any applicable order that VCAT may make under section 165.
- (3) A notice under this section must be in writing in the approved form.

159E What if the person does not rectify the breach?

S. 159E
inserted by
No. 34/2018
s. 5.

- (1) If a person has been given a notice under section 159D, the owners corporation may decide to apply to VCAT to resolve a short-stay accommodation dispute in relation to the breach and may seek one or more of the following orders—
 - (a) a prohibition order under section 169D;
 - (b) an order for a civil penalty under section 169G;
 - (c) any applicable order that VCAT may make under section 165.
- (2) The owners corporation may make a decision under subsection (1), whether or not the person to whom the notice is given has rectified the breach.

159F Report to annual general meeting

S. 159F
inserted by
No. 34/2018
s. 5.

- (1) The owners corporation must report to the annual general meeting in relation to—
 - (a) the number of complaints made under this Division; and
 - (b) the nature of the complaints; and
 - (c) the number of matters on which action was taken under this Division; and
 - (d) the nature of the matters in respect of which action was taken; and
 - (e) the outcome of each action.
- (2) The report must not identify the person who made a complaint or the short-stay occupant alleged to have committed the breach.

Division 2—Powers of Director

160 Making a complaint

- (1) Any person may complain to the Director about any matter that the Director has power to refer to conciliation under section 161.
- (2) A person may complain to the Director in writing.
- (3) The Director may ask a person who has made a complaint to give more information about the complaint within the time fixed by the Director.
- (4) A person who has made a complaint must give his or her name to the Director and such other information relating to his or her identity as the Director may require.

161 Conciliation and mediation

- (1) The Director may refer to a consumer affairs employee for conciliation or mediation any dispute (which is reasonably likely to be settled) between any of the following that arises in relation to the operation of the owners corporation—
 - (a) a current or former lot owner;
 - (b) mortgagee of a lot;
 - (c) an insurer;
 - (d) an occupier of a lot;
 - (e) a purchaser of a lot;
 - (ea) an agent provider;
 - (f) a manager of an owners corporation.
- (2) Subsection (1) does not apply to a dispute under section 113(4) of the **Australian Consumer Law and Fair Trading Act 2012**.
- (3) If the whole or any part of a dispute under subsection (1) falls within the jurisdiction of any

S. 161(1)(ea)
inserted by
No. 34/2018
s. 6.

S. 161(2)
amended by
No. 21/2012
s. 239(Sch. 6
item 33.3).

prescribed person or body, the Director must refer the dispute, or that part of the dispute, to the person within whose jurisdiction it falls.

- (4) Subsection (1) applies whether or not a person has made a complaint.

- (5) In this section—

consumer affairs employee means any person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.

Part 11—Applications to VCAT

Division 1—Owners corporation disputes

162 VCAT may hear and determine disputes

VCAT may hear and determine a dispute or other matter arising under this Act or the regulations or the rules of an owners corporation that affects an owners corporation (*an owners corporation dispute*) including a dispute or matter relating to—

- (a) the operation of an owners corporation; or
- (b) an alleged breach by a lot owner or an occupier of a lot of an obligation imposed on that person by this Act or the regulations or the rules of the owners corporation; or
- (c) the exercise of a function by a manager in respect of the owners corporation; or
- (d) a term of a contract of appointment of the manager of an owners corporation, including whether a term is fair; or
- (e) the disposal by an owners corporation of goods abandoned on the common property.

S. 162(c)
amended by
No. 4/2021
s. 68(a).

S. 162(d)
inserted by
No. 4/2021
s. 68(b).

S. 162(e)
inserted by
No. 4/2021
s. 68(b).

163 Who may apply to VCAT in relation to a dispute?

- (1) Any of the following persons may apply to VCAT to resolve an owners corporation dispute—
 - (a) a manager or former manager;
 - (b) a lot owner or former lot owner;
 - (c) the owners corporation;
 - (d) an occupier or former occupier of a lot;

- (e) a mortgagee of a lot;
- (f) an insurer under a policy taken out by the owners corporation;
- (g) the Director.

(1A) A lot owner may apply to VCAT on behalf of an owners corporation to resolve an owners corporation dispute.

S. 163(1A)
inserted by
No. 36/2011
s. 11.

Note

This subsection clarifies that the rule in *Foss v Harbottle* (1843) 67 ER 189 does not apply to owners corporation disputes.

- (2) An application to VCAT by the owners corporation for an order requiring a lot owner to pay an amount payable by the lot owner to the owners corporation can only be made if the amount is not paid within 28 days after the final notice is given under section 32.

164 VCAT may dismiss application

VCAT may make an order dismissing or striking out an application by an owners corporation for an order requiring the rectification of an alleged breach referred to in section 153 if it is satisfied that the owners corporation has not complied with that section.

S. 164
amended by
No. 4/2021
s. 69.

165 What orders can VCAT make?

- (1) In determining an owners corporation dispute, VCAT may make any order it considers fair including one or more of the following—
 - (a) an order requiring a party to do or refrain from doing something;
 - (b) an order requiring a party to comply with this Act or the regulations or the rules of the owners corporation;

S. 165(1)(ba)
inserted by
No. 36/2011
s. 12,
repealed by
No. 4/2021
s. 70(1)(a).

* * * * *

- (c) an order for the payment of a sum of money—
 - (i) found to be owing by one party to another party;
 - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
 - (iii) by way of restitution;
- (ca) an order requiring a lot owner to pay to the owners corporation reasonable costs incurred by the owners corporation in recovering an unpaid amount from the lot owner (other than costs in the proceeding);
- (d) an order varying any term of a contract or agreement;
- (e) an order declaring that a term of a contract or agreement is, or is not, void;
- (f) an order declaring—
 - (i) the terms of a delegation; or
 - (ii) the meaning of a rule of the owners corporation;
- (g) if an owners corporation is required under this Act to have a committee and a committee has not been appointed at or immediately after the first annual general meeting, an order appointing a committee of the owners corporation;

S. 165(1)(ca)
inserted by
No. 4/2021
s. 70(1)(b).

- (h) an order appointing (with the person's consent) or revoking the appointment of—
 - (i) the chairperson of the owners corporation;
 - (ii) the secretary of the owners corporation;
 - (iii) a member of a committee or sub-committee of the owners corporation;
- (i) an order—
 - (i) appointing a person (with the person's consent) as manager of the owners corporation, on specified terms and conditions;
 - (ii) revoking the appointment of a manager of an owners corporation;
 - (iii) imposing conditions or restrictions on the management by a manager of the owners corporation;
- (j) an order in relation to damaged or destroyed buildings or improvements;
- (k) an order as to the payment of insurance money under any policy taken out by an owners corporation;
- (l) an order requiring an order to be recorded in the owners corporation register, the register of managers or in the Register kept under the **Transfer of Land Act 1958**;
- (m) an order requiring the Registrar to amend the Register; S. 165(1)(m)
amended by
No. 4/2021
s. 70(1)(c).
- (n) an order requiring an occupier of a lot to grant entry to a lot or a building on a lot to a S. 165(1)(n)
inserted by
No. 4/2021
s. 70(1)(d).

person authorised by an owners corporation for the purposes of section 50.

- (2) In awarding damages in the nature of interest, VCAT may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate it thinks appropriate.
- (3) VCAT may make any interim orders and ancillary orders it thinks fit in relation to an owners corporation dispute.
- (4) This section does not affect VCAT's power to award costs under section 109 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 165(4)
inserted by
No. 4/2021
s. 70(2).

Note

Clause 51AD of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** provides that any member of VCAT can make a declaration in a proceeding under this Act.

S. 166
amended by
No. 4/2021
s. 71(1).

166 Penalty for breach of rules

If VCAT determines that a person has failed to comply with a rule of the owners corporation that imposes an obligation that is binding on the person, VCAT may make an order imposing a civil penalty not exceeding \$1100 to be paid to the owners corporation.

* * * * *

Note to s. 166
repealed by
No. 4/2021
s. 71(2).

S. 167
amended by
No. 4/2021
s. 72 (ILA
s. 39B(1)).

167 What must VCAT consider?

- (1) VCAT in making an order must consider the following—
 - (a) the conduct of the parties;
 - (b) an act or omission or proposed act or omission by a party;

- (c) the impact of a resolution or proposed resolution on the lot owners as a whole;
 - (d) whether a resolution or proposed resolution is oppressive to, unfairly prejudicial to or unfairly discriminates against, a lot owner or lot owners;
 - (e) any other matter VCAT thinks relevant.
- (2) For the purposes of an order under section 162(d), in determining a dispute or matter relating to whether a term of a contract of appointment of the manager of an owners corporation is fair, VCAT must consider Part 2-3 of the Australian Consumer Law (Victoria) as if a reference in that Part to a consumer contract were a reference to the contract of appointment of the manager.

S. 167(2)
inserted by
No. 4/2021
s. 72.

168 Monetary orders

- (1) If VCAT makes an order under section 165 relating to the payment of money by the owners corporation, it may by order—
- (a) direct that any money (including expenses and costs) payable must be paid from contributions levied in relation to the lots and in the proportions specified in the order; and
 - (b) direct the owners corporation to levy contributions in accordance with the order; and
 - (c) prohibit the owners corporation from levying a contribution from another party to the dispute.
- (2) If VCAT makes an order under section 165 relating to the payment of money by a manager, it may by order prohibit the manager from seeking or enforcing an indemnity from the owners corporation or any other party.

169 Notice to Business Licensing Authority

VCAT must notify the Business Licensing Authority of the making of any order revoking the appointment of a manager.

Pt 11 Div. 1A
(Heading and
ss 169A–
169H)
inserted by
No. 34/2018
s. 7.

Division 1A—Short-stay accommodation disputes

S. 169A
inserted by
No. 34/2018
s. 7.

169A VCAT may hear and determine short-stay accommodation disputes

VCAT may hear and determine a dispute relating to an alleged breach by a short-stay occupant of the proscribed conduct (*a short-stay accommodation dispute*).

S. 169B
inserted by
No. 34/2018
s. 7.

169B Who may apply to VCAT in relation to a short-stay accommodation dispute?

Any of the following persons may apply to VCAT to resolve a short-stay accommodation dispute—

- (a) the owners corporation;
- (b) a lot owner or former lot owner;
- (c) a lot owner on behalf of an owners corporation;
- (d) an occupier;
- (e) an agent provider.

S. 169C
inserted by
No. 34/2018
s. 7.

169C What orders can VCAT make?

In determining a short-stay accommodation dispute, VCAT may make any order it considers

fair including one or more of the following orders—

- (a) a prohibition order under section 169D;
- (b) a loss of amenity compensation order under section 169E;
- (c) an order for a civil penalty under section 169G;
- (d) any applicable order that VCAT may make under section 165.

169D Prohibition order

S. 169D
inserted by
No. 34/2018
s. 7.

- (1) VCAT may make an order prohibiting the use of a lot or part of a lot for the purpose of a short-stay accommodation arrangement for a specified period if—
 - (a) a notice under section 159D has been served on a short-stay provider on at least 3 separate occasions within 24 months (regardless of whether the short-stay provider was an agent provider or a lessee of the lot or part of the lot); and
 - (b) each notice relates to an alleged breach by a short-stay occupant of the proscribed conduct specified in section 159A(2).
- (2) Subject to subsection (3), a prohibition order ceases to have effect if the lot that is used (wholly or partly) for the purpose of a short-stay accommodation arrangement is sold.
- (3) A prohibition order does not cease to have effect upon the sale of a lot that is used (wholly or partly) for the purpose of a short-stay accommodation arrangement, if the sale of that lot is made—

- (a) where the short-stay provider is the owner of the lot—to a person who has a beneficial relationship with the short-stay provider; or
 - (b) where one of the notices under subsection (1) was served on a short-stay provider who is not the owner of the lot—to the short-stay provider or a person who has a beneficial relationship with the short-stay provider.
- (4) For the purposes of subsection (3), a person has a beneficial relationship with a short-stay provider if the short-stay provider is—
- (a) an associate of the person; or
 - (b) a body corporate of which the person, or an associate of the person, is a member; or
 - (c) a corporation over which the person (either as an individual or jointly with associates) or an associate of the person, can exercise control of; or
 - (d) a corporation of which the person, or an associate of the person, is an executive officer; or
 - (e) in the case of a person that is a corporation—an executive officer of that corporation or an associate of an executive officer of that corporation; or
 - (f) the trustee of a discretionary trust of which the person, or an associate of the person, is a beneficiary; or
 - (g) a member of a firm of which the person, or an associate of the person, is a member.
- (5) In this section the following definitions apply—
- associate* means—
- (a) an employee of the person; or

- (b) a spouse, domestic partner, parent, sibling or child of the person or the person's representative; or
- (c) a child of the spouse or domestic partner of the person or the person's representative;

control has the meaning given by section 50AA of the Corporations Act;

executive officer means any person described as an executive officer, whether or not the person is a director of the corporation, who is concerned with, or takes part in, the management of the corporation.

169E Loss of amenity compensation order

S. 169E
inserted by
No. 34/2018
s. 7.

- (1) VCAT may make an order for compensation in favour of an occupier (**a loss of amenity compensation order**) who resides in the same building or part of a building where a short-stay occupant resides, and has suffered a loss of amenity caused by a breach by the short-stay occupant of the proscribed conduct referred to in subsection (2).
- (2) For the purposes of this section, VCAT may make a loss of amenity compensation order in relation to the following breaches by a short-stay occupant—
 - (a) unreasonably creating any noise likely to substantially interfere with the peaceful enjoyment of an occupier of another lot (other than the making of noise where the owners corporation has given written permission for that noise to be made);
 - (b) behaving in a manner likely to unreasonably and substantially interfere with the peaceful enjoyment of an occupier of another lot;

- (c) using a lot or the common property, or permitting a lot or the common property to be used, so as to cause a substantial hazard to the health, safety and security of an occupier;
 - (d) unreasonably and substantially obstructing the lawful use and enjoyment of the common property by an occupier or a guest of an occupier.
- (3) The maximum amount of compensation that VCAT may order under this section is \$2000 for each affected occupier for each breach.
 - (4) An application for a loss of amenity compensation order must be made within 60 days of the relevant breach.
 - (5) A loss of amenity compensation order may be made in addition to any order made under section 165(1)(c)(ii).
 - (6) Where VCAT makes loss of amenity compensation orders in favour of multiple applicants in relation to the same breach, in determining the amount of compensation to be paid under each order, VCAT must take into account whether the total compensation proposed is proportional to the harm caused by the breach.

S. 169F
inserted by
No. 34/2018
s. 7.

169F What must VCAT consider?

- (1) In making an order to resolve a short-stay accommodation dispute, VCAT must consider the following—
 - (a) the conduct of the parties;
 - (b) an act or omission or proposed act or omission by a party;

- (c) any other matter VCAT thinks relevant.
- (2) In relation to a prohibition order under section 169D, VCAT must also consider the following—
 - (a) the severity and nature of the breach;
 - (b) the time between the breaches;
 - (c) the history of the short-stay provider's provision of short-stay accommodation arrangements;
 - (d) any measures the short-stay provider took to prevent the breach.

169G Civil penalty for breach by short-stay occupant

S. 169G
inserted by
No. 34/2018
s. 7.

Where VCAT determines that there is a breach by a short-stay occupant of the proscribed conduct specified in section 159A(2), VCAT may make an order imposing a civil penalty not exceeding \$1100.

Note

The penalties imposed under this section will be paid into the Victorian Property Fund.

169H Joint and several liability of short-stay provider and short-stay occupant

S. 169H
inserted by
No. 34/2018
s. 7.

- (1) A short-stay provider and a short-stay occupant are jointly and severally liable for satisfying any order made under—
 - (a) section 165(1)(c) to compensate for loss or damage incurred as a result of the short-stay occupant substantially damaging or altering—
 - (i) a lot or the common property, intentionally or negligently; or

- (ii) a structure that forms part of a lot or the common property, intentionally or negligently; or
 - (b) section 165(1)(j) to rectify loss or damage incurred as a result of the short-stay occupant substantially damaging or altering—
 - (i) a lot or the common property, intentionally or negligently; or
 - (ii) a structure that forms part of a lot or the common property, intentionally or negligently; or
 - (c) section 169E to compensate for loss of amenity; or
 - (d) section 169G to pay a civil penalty.
- (2) Where a lot owner has appointed an agent provider—
- (a) subsection (1) does not apply to an agent provider; and
 - (b) the lot owner and the short-stay occupant are jointly and severally liable instead for satisfying any order referred to in subsection (1).
- (3) Despite subsection (1), a short-stay provider is not liable for satisfying a loss of amenity compensation order under section 169E if VCAT is satisfied that the short-stay provider took all reasonable steps to prevent any relevant breach by a short-stay occupant of the proscribed conduct specified in section 159A(2).

169I Lot owner may apply to VCAT to commence, prosecute, defend or discontinue any proceeding on behalf of owners corporation

S. 169I
inserted by
No. 4/2021
s. 73.

- (1) A lot owner may apply to VCAT for an order that authorises the lot owner to commence, prosecute, defend or discontinue a specified proceeding on behalf of the owners corporation.
- (2) At the hearing of an application under subsection (1)—
 - (a) a lot owner has the burden of proving why VCAT should make an order under subsection (1) if—
 - (i) the owners corporation has not voted on a special resolution relating to the matter that is the subject of the lot owner's application; or
 - (ii) the owners corporation has unsuccessfully voted on a special resolution relating to the matter that is the subject of the lot owner's application and an ordinary resolution would not have been passed; and
 - (b) any other party to the application has the burden of proving why VCAT should not make an order under subsection (1) if the owners corporation has unsuccessfully voted on a special resolution relating to the matter that is the subject of the lot owner's application and an ordinary resolution would have been passed.

Note

See section 18.

169J VCAT may make order authorising lot owner to commence, prosecute, defend or discontinue proceeding

S. 169J
inserted by
No. 4/2021
s. 73.

- (1) On an application under section 169I, VCAT, by order, may authorise a lot owner to commence, prosecute, defend or discontinue any proceeding specified in the order, on behalf of the owners corporation.
- (2) VCAT may make an order under subsection (1) whether or not the application for the order is made by the lot owner in relation to an owners corporation dispute under section 162.
- (3) If the application for the order is made in relation to an owners corporation dispute under section 162, in deciding whether to make an order under subsection (1), VCAT must consider the matters specified in section 167.

Division 2—Exemption orders

170 Owners corporation may apply to VCAT for exemption

An owners corporation may apply to VCAT for an exemption from—

- (a) compliance with a requirement under this Act to include a lot owner's name in the owners corporation register;
- (b) a requirement under this Act to hold insurance, where an appropriate insurance policy cannot be obtained on reasonable terms;
- (c) a requirement under this Act to have a unanimous resolution;
- (d) a prescribed provision of this Act or the regulations in the prescribed circumstances.

171 VCAT may make exemption order

- (1) On an application under section 170, VCAT may by order exempt the applicant from the requirement for which the exemption is sought.
- (2) An exemption must only be granted on a ground in section 170(a) if VCAT is satisfied that exceptional circumstances exist.
- (3) An exemption on the ground in section 170(b) must be granted only for a specified period (not exceeding the prescribed period).
- (4) An exemption must only be granted on the ground in section 170(c) if the vote in favour of the resolution is at least 75% of the total votes for all the lots affected by the owners corporation and there are no votes against the resolution.

Division 3—Restriction of access to records

172 Application to VCAT to restrict access to information

- (1) A person whose name or other personal information is kept in the records of the owners corporation or on the owners corporation register may apply to VCAT for an order restricting access to that information.
- (2) VCAT may, if it considers that exceptional circumstances exist, by order direct the owners corporation not to allow access to information about a person held in the owners corporation records or on the owners corporation register for the period specified in the order.
- (3) An order under this section may specify conditions, including conditions specifying the persons who are not to have access to the information.

Division 4—Appointment of administrator

173 Application for appointment of administrator

An owners corporation, a lot owner, a creditor of an owners corporation or any person with an interest in land affected by an owners corporation may apply to VCAT for the appointment of an administrator for the owners corporation.

174 Appointment of administrator

On an application under section 173, VCAT may—

- (a) appoint an administrator and set down terms and conditions of the appointment; or
- (b) make any other order it thinks fit.

175 Remuneration of administrator

The lot owners must pay the remuneration and expenses of the administrator in accordance with their lot liabilities or, if the order otherwise provides, in accordance with the order.

176 Powers and responsibilities of administrator

An administrator—

- (a) must lodge with the Registrar a copy of the order of appointment without delay;
- (b) may proceed to alter a plan relating to land affected by the owners corporation in any of the ways set out in section 32 of the **Subdivision Act 1988** only in accordance with an order of VCAT or a court order;
- (c) subject to any order of VCAT or court order, may do anything that the owners corporation or the committee can do;
- (d) may delegate in writing any power.

177 Administrator to act in good faith

An administrator in carrying out any functions and powers conferred by or under this Act or the **Subdivision Act 1988**—

- (a) must act honestly and in good faith; and
- (b) must exercise due care and diligence.

Part 12—Registration of managers

Division 1—Managers to be registered

178 Offence to act as manager without being registered

A person must not, alone or in partnership, carry out any function as the manager of an owners corporation for fee or reward unless the person is registered under this Part.

Penalty: 60 penalty units.

179 Eligibility for registration

A person is not eligible to be registered under this Part if—

- (a) in the case of a natural person, the person is under 18 years of age; or
- (b) the person or, if the person is a corporation, a director of the corporation, is a represented person within the meaning of the **Guardianship and Administration Act 2019**; or
- (c) the person, or if the person is a corporation, a director of the corporation, is an insolvent under administration or an externally-administered body corporate; or
- (d) the person, or if the person is a corporation, a director of the corporation has, within the last 10 years, been convicted or found guilty of—
 - (i) an offence involving fraud, dishonesty, drug cultivation or trafficking that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or

S. 179(b)
amended by
No. 13/2019
s. 221(Sch. 1
item 34).

S. 179(c)
amended by
No. 4/2021
s. 74(1).

S. 179(d)
inserted by
No. 4/2021
s. 74(2).

- (ii) an offence involving sexual slavery or servitude that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or
- (iii) an offence involving child pornography or violence that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or
- (iv) a sexual offence or an offence connected with sex work that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or
- (v) an offence that, if committed in Victoria, would constitute an offence referred to in subparagraph (i), (ii), (iii) or (iv).

Note

Despite this paragraph, a person to whom this paragraph applies may be granted permission to be registered under this Part if the Business Licensing Authority is satisfied that it is not contrary to the public interest to do so. See section 182A.

180 Application for registration

- (1) An application for registration as a manager may be made to the Business Licensing Authority.
- (2) An application must be—
 - (a) in writing in or to the effect of the form approved by the Business Licensing Authority; and

S. 180(2)(a)
amended by
No. 2/2008
s. 19.

(b) accompanied by evidence as to the identity of—

(i) the applicant; or

(ii) if the applicant is a corporation, the directors of the corporation—

by means of a birth certificate, passport (if the passport is current or expired for not more than 2 years), driver licence or any other document in one of the prescribed categories; and

(c) accompanied by evidence that the applicant is covered by the required professional indemnity insurance; and

(d) accompanied by the prescribed fee.

181 Further information

The Business Licensing Authority may ask the applicant to give it any further information that it reasonably requires to determine the application and may refuse the application if the applicant does not comply with the request within the time specified by the Authority.

182 Registration

(1) The Business Licensing Authority must register the applicant under this Part if it is satisfied that the applicant—

(a) is eligible to be registered under this Part; and

(b) has complied with sections 180 and 181.

(2) A registration remains in force until it is cancelled or surrendered.

182A Permission to be registered as manager despite criminal record

S. 182A
inserted by
No. 4/2021
s. 75.

- (1) A person to whom section 179(d) applies may apply to the Business Licensing Authority for permission to be registered as a manager.
- (2) An application under subsection (1) must—
 - (a) be in the form approved by the Business Licensing Authority; and
 - (b) contain the information required by the Business Licensing Authority; and
 - (c) be accompanied by the documents required by the Business Licensing Authority; and
 - (d) be accompanied by the prescribed fee (if any).
- (3) In considering an application under this section, the Business Licensing Authority may do one or more of the following—
 - (a) conduct any inquiries it thinks fit;
 - (b) require the applicant to provide any further information that the Authority thinks fit in the manner required by the Authority;
 - (c) seek advice and information on the application from any other person or body as it thinks fit.
- (4) The Business Licensing Authority may refuse to consider the application if the applicant—
 - (a) does not provide any further information required by the Authority; or
 - (b) does not give consent to the Authority to obtain that information within a reasonable time after the requirement is made.

- (5) The Business Licensing Authority may permit the applicant to be registered under this Part if it is satisfied that it is not contrary to the public interest for it to do so.

183 Annual registration fee and statement

- (1) A registered manager must pay to the Business Licensing Authority the prescribed annual registration fee on the anniversary of the date the manager was last registered under this Part.
- (2) An annual registration fee may be paid at any time in the 6 weeks before it falls due.
- (3) The payment must be accompanied by a statement in respect of the year up to the date that the payment is made that is in a form approved by the Authority and that is signed—
- (a) by the manager, if the manager is a natural person; or
 - (b) if the manager is a corporation, by a director of the corporation.
- (4) The statement must contain any information, and be accompanied by any documents, required by the Authority.

184 Extension of time

- (1) On payment of the prescribed fee (if any), a person may apply to the Business Licensing Authority for an extension of time, or a further extension of time, in which to comply with section 183.
- (2) The Business Licensing Authority may grant the application if it is made before the date in relation to which the extension is sought.

185 Failure to lodge annual statement

- (1) If a registered manager fails to comply with section 183, the Business Licensing Authority must give the manager a written notice stating that unless the manager complies with that section and also pays to the Business Licensing Authority the prescribed late payment or lodgement fee by the date specified in the notice, the manager's registration will be cancelled.
- (2) The date specified in the notice must be at least 14 days after the date on which the notice is given to the manager.
- (3) If the manager has not complied with section 183 and paid the late payment or lodgement fee by the date specified in the notice, the registration is automatically cancelled.

185A Professional indemnity insurance

- (1) A registered manager must, at all times, be covered by professional indemnity insurance in accordance with section 119(5).
- (2) A registered manager must notify the Business Licensing Authority if the registered manager ceases to be covered by professional indemnity insurance.

S. 185A
inserted by
No. 4/2021
s. 76.

186 Automatic cancellation of registration

- (1) A person's registration as a manager is automatically cancelled if—
 - (a) the person or, if the person is a corporation, a director of the corporation, becomes a represented person within the meaning of the **Guardianship and Administration Act 2019**; or

S. 186
amended by
No. 4/2021
s. 77 (ILA
s. 39B(1)).

S. 186(1)(a)
amended by
No. 13/2019
s. 221(Sch. 1
item 34).

S. 186(2)
inserted by
No. 4/2021
s. 77.

- (b) the person, or if the person is a corporation, a director of the corporation, becomes an insolvent under administration or an externally-administered body corporate.
- (2) Subject to section 186A, a person's registration as a manager is automatically cancelled 30 days after the person, or if the person is a corporation, a director of the corporation, is convicted or found guilty of—
- (a) an offence involving fraud, dishonesty, drug cultivation or trafficking that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or
 - (b) an offence involving sexual slavery or servitude that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or
 - (c) an offence involving child pornography or violence that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or
 - (d) a sexual offence or an offence connected with sex work that was punishable by a term of imprisonment for 3 months or more at the time of the conviction or finding of guilt; or
 - (e) an offence that, if committed in Victoria, would constitute an offence referred to in paragraph (a), (b), (c) or (d).
- (3) For the purposes of subsection (2), the conviction or finding of guilt of the person takes effect on the later of—

S. 186(3)
inserted by
No. 4/2021
s. 77.

- (a) if the person appeals against the conviction or finding of guilt—
 - (i) the day on which the conviction or finding is upheld or confirmed; or
 - (ii) the day on which leave to appeal is refused; or
- (b) in any other case—at the end of the period during which the person may appeal against the conviction or finding of guilt.

(4) If a person whose registration would otherwise be cancelled under subsection (2) applies for permission under section 186A to continue to be registered as a manager within the 30-day period referred to in subsection (2), the person's registration is only automatically cancelled if the application is withdrawn or is refused by the Business Licensing Authority.

S. 186(4)
inserted by
No. 4/2021
s. 77.

(5) A person's registration as a manager is automatically cancelled 30 days after the person fails to be covered by professional indemnity insurance in accordance with section 185A.

S. 186(5)
inserted by
No. 4/2021
s. 77.

186A Permission to continue to be registered as manager despite criminal record

S. 186A
inserted by
No. 4/2021
s. 78.

- (1) A person to whom section 186(2) applies may, within the 30-day period referred to in that subsection, apply to the Business Licensing Authority for permission to continue to be registered as a manager.
- (2) An application under subsection (1) must—
 - (a) be in the form approved by the Business Licensing Authority; and
 - (b) contain the information required by the Business Licensing Authority; and

- (c) be accompanied by the documents required by the Business Licensing Authority; and
 - (d) be accompanied by the prescribed fee (if any).
- (3) In considering an application under this section, the Business Licensing Authority may do one or more of the following—
- (a) conduct any inquiries it thinks fit;
 - (b) require the applicant to provide any further information that the Authority thinks fit in the manner required by the Authority;
 - (c) seek advice and information on the application from any other person or body as it thinks fit.
- (4) The Business Licensing Authority may refuse to consider the application if the applicant—
- (a) does not provide any further information required by the Authority; or
 - (b) does not give consent to the Authority to obtain that information within a reasonable time after the requirement is made.
- (5) The Business Licensing Authority may permit the applicant to continue to be registered under this Part if it is satisfied that it is not contrary to the public interest for it to do so.

S. 186B
inserted by
No. 4/2021
s. 78.

186B Conditions on permission

- (1) In giving its permission under section 182A(5) or 186A(5), the Business Licensing Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.

- (2) The Business Licensing Authority may at any time impose conditions in respect of the permission or vary or revoke any conditions it has previously imposed.
- (3) A person to whom permission has been given must comply with any conditions imposed in respect of the permission.
Penalty: 25 penalty units.
- (4) If the Business Licensing Authority is satisfied that any condition imposed in respect of a permission has been contravened, it may revoke the permission.
- (5) Before taking action under this section, the Business Licensing Authority may seek and use information and advice from any person or body or other sources as it thinks fit.

187 Death, disability etc. of registered manager

- (1) The following persons may carry on the management business of a person who was registered under this Part for 60 days after the person ceases to be registered—
 - (a) if the person dies, the executor named in the person's will or the administrator of the person's estate or any person who intends applying for letters of administration in relation to the person's estate;
 - (b) if the person becomes an insolvent under administration, the assignee, trustee or receiver of the person;
 - (c) if the person becomes a represented person within the meaning of the **Guardianship and Administration Act 2019**, the guardian or administrator of the person or

S. 187(1)(c)
amended by
No. 13/2019
s. 221(Sch. 1
item 34).

- any person nominated by the guardian or administrator;
- (d) if the person becomes an externally-administered body corporate, the liquidator, official manager, receiver, receiver and manager or other external administrator.
- (2) If a person authorised to carry on a business applies to the Business Licensing Authority within the 60 day period for permission to carry on the business for a longer period, the person may continue to carry on the business until the Authority makes a decision on the application.
- (3) The Business Licensing Authority may grant an application if it is satisfied that it is not contrary to the public interest to do so.
- (4) In granting its permission, the Authority may limit it in any way it thinks appropriate and may impose any conditions it thinks appropriate to ensure the ongoing protection of the public interest.
- (5) A person who carries on a management business under this section is deemed to be a registered manager for the purposes of this Act.

188 If details given in application or annual statement change

If, before a decision is made under section 182 to register a person as a manager or while a registration is in force, a material change occurs in any of the details provided in the application for registration or in the last statement lodged by a person under section 183, the person must give the Business Licensing Authority written details of the change within 14 days after the person becomes aware of the change.

Penalty: 10 penalty units.

189 Offence to supply false or misleading information

A person who is required under this Part to give any information or document to the Business Licensing Authority must not—

- (a) give information that the person believes to be false or misleading in a material particular; or
- (b) produce a document that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

190 Cancellation of registration if false information is given

The Business Licensing Authority may cancel the registration of a manager if the Authority believes on reasonable grounds that the manager has obtained that registration by providing false or misleading information.

191 Application for review

- (1) A person whose interests are affected by a decision of the Business Licensing Authority under this Act may apply to VCAT for a review of the decision.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or

- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 2—Register of managers

192 Register of managers

The Licensing Registrar must keep a register of managers in the form determined by the Licensing Registrar.

193 Purposes of register of managers

The purposes of keeping the register of managers are—

- (a) to enable lot owners and members of the public to have access to information about registered managers; and
- (b) to record details of the professional indemnity insurance held by registered managers; and
- (c) to provide the Director and the Business Licensing Authority with information enabling them to contact registered managers to inform them of changes in legal requirements affecting them; and
- (d) to provide the Director and the Business Licensing Authority with information in relation to owners corporations managed by a registered manager to enable them to contact the owners corporations in relation to the activities of the manager.

194 What must the register of managers contain?

The register of managers must contain information that is available to the Business Licensing Authority on the following in relation to each person registered as a manager under this Part—

- (a) the registration number issued by the Business Licensing Authority;
- (b) the name of the person;
- (c) if the person is a natural person, the person's address for service, telephone number and email address (if any);
- (d) if the person is a corporation—
 - (i) the corporate name (including the ACN);
 - (ii) the address of its registered office or its address for service if this is different from its registered office;
 - (iii) the telephone number and email address (if any);
 - (iv) the name of each director of the corporation;
- (e) all business names under which the person carries on a management business;
- (f) the Australian Business Number (if any) issued under the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth issued to the person;
- (g) the Internet site address maintained by the person for the purposes of the management business (if any);
- (h) current details of the professional indemnity insurance held by the person;

S. 194(j)
amended by
No. 21/2012
s. 239(Sch. 6
item 33.4).

- (i) any orders of VCAT under this Act relating to the person as a manager, including orders for appointment or removal of the person as manager;
- (j) any undertakings given to the Director under this Act or the **Australian Consumer Law and Fair Trading Act 2012**;
- (k) the date of grant, surrender or cancellation of registration;
- (l) any other prescribed information.

195 Inspection of register of managers

A person in accordance with the regulations (if any) and on payment of the prescribed fee (if any) may—

- (a) inspect the register of managers; and
- (b) obtain copies of, or extracts from, the register of managers.

196 Removal of information from register of managers

Subject to the **Public Records Act 1973**, the Licensing Registrar, if in his or her opinion it is no longer necessary or desirable to retain it, may remove any information from the register of managers 12 years after the information was added to the register.

197 Duty of Licensing Registrar

In the exercise and performance of his or her duties under this Part the Licensing Registrar must act on any information that appears to the Licensing Registrar sufficient in each case.

Division 3—General

198 Provision of information for the purposes of this Act

Despite anything to the contrary in section 18 of the **Business Licensing Authority Act 1998**, for the purposes of determining compliance with this Act and for carrying out the functions of the Business Licensing Authority or the Director under this Act—

- (a) the Authority may disclose to the Director, any information collected in the course of carrying out the Authority's functions under this Act; and
- (b) the Director may disclose to the Authority any information collected in the course of carrying out the Director's functions under this Act.

* * * * *

S. 199
amended by
No. 72/2010
s. 48(Sch.
item 17),
substituted by
21/2012
s. 239(Sch. 6
item 33.5),
amended by
No. 12/2015
s. 21(Sch. 1
item 7),
repealed by
No. 4/2021
s. 79.

Part 13—General

New s. 199
inserted by
No. 4/2021
s. 80.

199 Application of Australian Consumer Law and Fair Trading Act 2012

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except sections 152, 153 and 175) extends and applies (with any necessary modifications) to this Act as if any reference in that Part to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act and any regulations made under this Act.
- (2) Sections 125, 195 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act and any regulations made under this Act.
- (3) For the purposes of subsection (2)—
 - (a) section 210 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to Part 3.1 or Part 6.3 of the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act and any regulations made under this Act; and
 - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to prescribed proceedings were a reference to—
 - (i) proceedings for an offence against a provision of this Act or any regulations made under this Act (except an offence applied by subsection (1)); or

- (ii) proceedings on an application for an injunction under section 201, 202 or 203 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act or any regulations made under this Act (except an offence applied by subsection (1)); or
- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)).

200 Approved forms

- (1) The Director may from time to time approve forms for the purposes of this Act.
- (2) The Director must publish a copy of each approved form on the Internet site for the Department.

200A Manner in which documents may be given to or served on owners corporation

S. 200A
inserted by
No. 4/2021
s. 81.

- (1) Any document under this Act required to be given to an owners corporation may be given to the owners corporation—
 - (a) by leaving it with the chairperson or secretary of the owners corporation or a member of the committee of the owners corporation; or
 - (b) by leaving it in the letterbox of the owners corporation at the address of the owners corporation recorded in the owners corporation register; or

- (c) by posting it, by prepaid mail, to the owners corporation at the address of the owners corporation recorded in the owners corporation register; or
 - (d) by sending it by electronic transmission to an address or location nominated by the chairperson or the secretary of the owners corporation or a member of the committee of the owners corporation.
- (2) Any document under this Act required to be served on an owners corporation may be served on the owners corporation—
- (a) by leaving it with—
 - (i) the chairperson or the secretary of the owners corporation; or
 - (ii) a member of the committee of the owners corporation; or
 - (iii) the manager of the owners corporation (if any); or
 - (b) by posting it, by prepaid mail, to the owners corporation at the address of the owners corporation recorded in the owners corporation register.

201 Money to be paid to Victorian Property Fund

The following money must be paid into the Victorian Property Fund under the **Estate Agents Act 1980**—

- (a) all fees payable to the Authority under this Act;
- (b) all penalties (other than a civil penalty under section 166) payable under this Act.

S. 201(b)
substituted by
No. 4/2021
s. 82.

202 Certain provisions of contracts void

A provision of a contract is void to the extent that it purports to exclude, modify or restrict the operation of this Act.

203 Who may commence a proceeding for offences?

S. 203
(Heading)
amended by
No. 4/2021
s. 83(1).

(1) Proceedings for an offence against this Act may only be commenced by—

S. 203(1)
amended by
No. 4/2021
s. 83(2)(a).

(a) the Director; or

(b) a person authorised by the Director for the purposes of this section.

(2) In any proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person commencing the proceeding was authorised to commence the proceeding.

S. 203(2)
amended by
No. 4/2021
s. 83(2)(b).

203A Infringement notices

S. 203A
inserted by
No. 63/2010
s. 62.

(1) An authorised officer may serve an infringement notice on any person who the officer has reason to believe has committed an offence against this Act that is prescribed for the purposes of this subsection.

(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

(3) The infringement penalty for an offence prescribed for the purposes of subsection (1) is the prescribed infringement penalty.

(4) In this section *authorised officer* means—

- (a) an inspector;
- (b) a police officer;
- (c) a person authorised in writing by the Director.

S. 203A(4)(b)
substituted by
No. 37/2014
s. 10(Sch.
item 121.2).

204 Regulation-making powers

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) regulating and requiring the taking out of insurance by an owners corporation and lot owners of an owners corporation including but not limited to—
 - (i) prescribing terms to be contained in insurance policies in relation to lots or common property; and
 - (ii) requiring the noting of mortgagees' interests on insurance policies taken out by owners corporations; and
 - (iii) prescribing the manner of indexing the sum insured for any particular class of insurance; and
 - (iv) prescribing approved insurers;
 - (b) requiring documents or information required to be kept under this Act to be lodged with the Registrar of Titles;
 - (c) requiring records or registers to be kept and prescribing the content and manner of keeping records or registers under this Act or the regulations;

- (d) prescribing model rules for the purposes of this Act;
 - (da) prescribing fees generally under this Act; S. 204(1)(da)
inserted by
No. 33/2014
s. 8(1).
 - (db) prescribing the fees that may be imposed by an owners corporation for the provision of an owners corporation certificate; S. 204(1)(db)
inserted by
No. 33/2014
s. 8(1).
 - (dc) prescribing for the purposes of section 67B(2) requirements for or in relation to hotel and resort management contracts or classes of hotel and resort management contracts, including but not limited to— S. 204(1)(dc)
inserted by
No. 4/2021
s. 83A.
 - (i) restricting the duration of those contracts;
 - (ii) limiting or placing parameters on fees and charges under those contracts or increases on those fees and charges;
 - (iii) prohibiting or regulating the inclusion of specified terms or conditions in those contracts;
 - (e) providing for any other matter that is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.
- (2) The regulations may—
- (a) differ according to differences in time, place and circumstance; and
 - (b) leave any matter to be determined by the Director or the Authority.

- (3) The regulations may apply, adopt or incorporate any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
- (a) wholly or partially or as amended by the regulations; or
 - (b) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.
- (4) A power conferred by subsection (1) to make regulations providing for the imposition of fees for the provision of an owners corporation certificate may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum fees;
 - (c) minimum fees;
 - (d) fees that vary according to value, time, complexity or urgency;
 - (e) fees that vary based on the number and regularity of requests made by a person;
 - (f) differential fees for different classes of request or based on the number of lots in a property.

S. 204(4)
inserted by
No. 33/2014
s. 8(2).

S. 205
(Heading)
amended by
No. 36/2011
s. 13(1).

205 Transitional and savings provisions

Schedule 2 has effect.

**Part 14—Transitional and
savings provisions—Owners Corporations
and Other Acts Amendment Act 2021**

Pt 14
(Heading and
ss 206–216)
amended by
No. 2/2008
s. 20,
repealed by
No. 1/2010
s. 92,
new Pt 14
(Heading and
new ss 206–
210)
inserted by
No. 4/2021
s. 84.

206 Definitions

In this Part—

2021 Act means the **Owners Corporations and
Other Acts Amendment Act 2021**;

commencement day means the day on which
Parts 2 and 3 of the 2021 Act come into
operation.

New s. 206
inserted by
No. 4/2021
s. 84.

207 Requirement to have maintenance plan

Section 36(1) as substituted by the 2021 Act does
not apply to—

- (a) a tier one owners corporation until
12 months after the commencement day; or
- (b) a tier two owners corporation until
24 months after the commencement day.

New s. 207
inserted by
No. 4/2021
s. 84.

208 Term of contract of appointment void

- (1) This section applies to a contract of appointment
of the manager of an owners corporation that is
entered into or renewed by the owners corporation
on or after the commencement day.

New s. 208
inserted by
No. 4/2021
s. 84.

- (2) If a contract of appointment includes any of the terms referred to in section 119A(1) as inserted by the 2021 Act, that term is void on and after the commencement day.

New s. 209
inserted by
No. 4/2021
s. 84.

209 Financial statements

- (1) Section 34 as substituted by the 2021 Act and sections 35 and 35A as substituted and inserted by the 2021 Act apply only in relation to a financial year commencing on or after the commencement day.
- (2) Sections 34 and 35 as in force immediately before the commencement day, continue to apply in relation to a financial year that commenced before the commencement day.

New s. 210
inserted by
No. 4/2021
s. 84.

210 Review of amendments made by 2021 Act

- (1) The Minister must cause a review of the operation of the amendments made to this Act by the 2021 Act to be undertaken.
- (2) The review must commence at least 2 years after the commencement day and no later than 5 years after the commencement day.
- (3) The review must review the operation of the amendments made to this Act by the 2021 Act in accordance with the terms of reference determined by the Minister, including how this Act as amended has operated and whether further or other amendments are required.
- (4) The person appointed by the Minister to conduct the review must provide a written report to the Minister.
- (5) The Minister must cause a copy of the review to be tabled before each House of the Parliament as soon as practicable after the review is completed.
- (6) This section is **repealed** on 1 December 2027.

Owners Corporations Act 2006
No. 69 of 2006

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**Pt 15
(Heading and
ss 217–219)
repealed by
No. 1/2010
s. 92.**

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**Pt 16
(Heading and
ss 220–224)
amended by
No. 2/2008
s. 21,
repealed by
No. 1/2010
s. 92.**

Schedules

Sch. 1
amended by
No. 4/2021
s. 85.

Schedule 1—Power to make rules of owners corporation

Section 138(1)

1 Health, safety and security

- 1.1 Health, safety and security of lot owners, occupiers of lots and guests.
- 1.2 Safety of children, including their exclusion from areas that may be unsafe for them or restricting activities that may be unsafe.
- 1.3 Storage of flammable liquids and other dangerous substances and materials.
- 1.4 Waste disposal.
- 1.5 Requiring advice to be given to occupiers about fire safety procedures and the operation of fire alarm systems.

2 Committees and sub-committees

- 2.1 Functions, powers and reporting of committees and sub-committees.
- 2.2 Functions of the chairperson and secretary.
- 2.3 Financial controls for committees, sub-committees and delegates.

3 Management and administration

- 3.1 Management and administration of common property and services.
- 3.2 Functions of manager.
- 3.3 Repair and maintenance of common property and services.
- 3.4 Metering of services and apportioning of costs of services.

3.5 Payment of fees by instalments by lot owners in financial difficulty.

4 Use of common property

4.1 Use of and access to common property.

4.2 Use of and access to equipment, services and amenities on common property.

4.3 Vehicles and parking on common property.

4.4 Drying of laundry on common property or external or visible areas of lots.

4.5 Damage to common property (but not preventing the installation of insect screens or safety lock devices).

4.6 Deposit of rubbish and other material on common property.

5 Lots

5.1 Change of use of lots.

5.2 External appearance of lots.

5.3 Requiring notice to the owners corporation of renovations to lots.

5.4 Times within which work on lots can be carried out.

6 Design

Design, construction and landscaping.

7 Behaviour of persons

7.1 Behaviour of owners, occupiers and guests on common property.

7.2 Noise and other nuisance control.

7.3 Regulating or prohibiting the drifting of tobacco smoke from a lot in a multi-level development.

8 Dispute resolution

Dispute resolution, including internal grievance procedures, hearing procedures and communication procedures.

9 Notices and documents

9.1 Notices, noticeboards and advertising.

9.2 Fees for provision of copies of rules, records and owners corporation register.

9.3 Notices about fees and charges.

10 Common seal

If the owners corporation uses a common seal, the use of the common seal.

Schedule 2—Transitional and savings provisions

Sch. 2
amended by
No. 36/2011
s. 13(2)(3).

Section 205

1 Definitions

In this Schedule—

commencement day means the day on which section 211 of the new Act comes into operation;

Subdivision Act means **Subdivision Act 1988**;

subdivision body corporate has the same meaning as body corporate has in the Subdivision Act as in force immediately before the commencement day;

Subdivision Regulations means the Subdivision (Body Corporate) Regulations 2001;

new Act means **Owners Corporations Act 2006**.

2 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) This Schedule applies despite anything to the contrary in any other provision of the new Act.

3 Subdivision bodies corporate deemed to be owners corporations

On and from the commencement day, a subdivision body corporate is deemed to be an owners corporation within the meaning of the Subdivision Act as amended by the new Act and to be the same body despite that change.

4 References to subdivision bodies corporate

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act), or in any instrument made under any Act or in any other document of any kind, a reference to a subdivision body corporate (however described) must be read as a reference to an owners corporation.

5 Rules of body corporate

Any rules of a subdivision body corporate in force immediately before the commencement day, continue in force on and after that commencement and are deemed to be rules of the owners corporation under the new Act to the extent that they are not inconsistent with the new Act or the regulations under the new Act.

6 Body corporate certificate

A body corporate certificate issued under the Subdivision Regulations and existing immediately before the commencement day is deemed to be an owners corporation certificate under the new Act.

7 Committees

A committee or sub-committee of a body corporate under the Subdivision Regulations and existing immediately before the commencement day is deemed on that commencement to be a committee or sub-committee established by the relevant owners corporation under the new Act.

8 Resolutions

- (1) A resolution of a body corporate in force immediately before the commencement day continues in force (until amended or revoked) to the extent that it is not inconsistent with the new

Act or the regulations under the new Act or the Subdivision Act as amended by the new Act.

- (2) A postal ballot commenced under the Subdivision Regulations but not completed before the commencement day may be completed on or after the commencement day despite anything to the contrary in this Act and any resolution resulting from that postal ballot takes effect as a resolution of the owners corporation to the extent that it is not inconsistent with the new Act or the regulations under the new Act or the Subdivision Act as amended by the new Act.
- (3) Any delegation made by a subdivision body corporate and existing immediately before the commencement day continues in force as a delegation under the new Act until—
 - (a) if it is inconsistent with the new Act, the first annual general meeting of the owners corporation after the commencement day;
and
 - (b) in any other case, it is revoked by the owners corporation under the new Act.

9 Managers

- (1) Despite section 178, a person who was a manager of a subdivision body corporate for fee or reward immediately before the commencement day may continue to act as the manager of an owners corporation for the period of 3 months after the commencement day without being registered under Part 12.
- (2) Despite section 178, a person who was a manager of a subdivision body corporate for fee or reward immediately before the commencement day and who applies to the Business Licensing Authority, before the end of the period of 3 months after the

commencement day, for registration under Part 12 may, without being registered under Part 12, continue to act as the manager of an owners corporation until the application is finally determined.

10 Administrators

Any administrator of a subdivision body corporate appointed by the Supreme Court or the County Court under section 38 of the Subdivision Act before its repeal by the new Act continues as administrator of the owners corporation and for that purpose section 38 continues to apply despite its repeal.

11 Transitional regulations

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.
- (2) Regulations under this clause may have retrospective effect to a day on or after the day on which this Act receives Royal Assent.
- (3) Regulations under this clause have effect despite anything to the contrary in any Act (other than this Act) or in any subordinate instrument.

12 Saving of certain delegations

A delegation under section 11 is not invalid merely because of the commencement of section 5 of the **Consumer Acts Amendment Act 2011**.

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Sch. 3
(Heading and
cls 1–13)
amended by
No. 2/2008
s. 22,
repealed by
No. 1/2010
s. 92.

Owners Corporations Act 2006
No. 69 of 2006
Schedule 2—Transitional and savings provisions

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current Versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 20 July 2006

Legislative Council: 12 September 2006

The long title for the Bill for this Act was "to provide for the management, powers and functions of owners corporations and for appropriate mechanisms for the resolution of disputes relating to owners corporations, to amend the **Subdivision Act 1988** in relation to the creation of owners corporations, to amend other Acts and for other purposes."

The **Owners Corporations Act 2006** was assented to on 19 September 2006 and came into operation on 31 December 2007: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Owners Corporations Act 2006** by Acts and subordinate instruments.

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: Ss 12–22 on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010 (as amended by Nos 63/2010, 36/2011)

Assent Date: 9.2.10
Commencement Date: Ss 28, 29, 92 on 1.8.10: Government Gazette 22.7.10 p. 1628; ss 21–27, 30–32, 34, 35, 37–40 on 1.1.11: Government Gazette 14.10.10 p. 2404; s. 36 on 1.9.11: s. 2(5); s. 33 never proclaimed, repealed by No. 36/2011 s. 35(1)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: S. 62 on 1.11.10: Government Gazette 14.10.10 p. 2404; s. 77(3) on 1.1.11: Government Gazette 14.10.10 p. 2404; s. 77(1)(2) never proclaimed, repealed by No. 36/2011 s. 26
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 17) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Consumer Acts Amendment Act 2011, No. 36/2011

Assent Date: 23.8.11
Commencement Date: Ss 5–14 on 24.8.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 33) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

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Owners Corporations Amendment Act 2013, No. 78/2013

Assent Date: 17.12.13
Commencement Date: 18.12.13: s. 2
Current State: All of Act in operation

Sale of Land Amendment Act 2014, No. 33/2014

Assent Date: 13.5.14
Commencement Date: S. 8 on 14.5.14: s. 2(1); s. 7 on 1.10.14: Special Gazette (No. 282) 26.8.14 p. 1
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 121) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Veterans and Other Acts Amendment Act 2015, No. 12/2015

Assent Date: 21.4.15
Commencement Date: S. 21(Sch. 1 item 7) on 22.4.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Owners Corporations Amendment (Short-stay Accommodation) Act 2018, No. 34/2018

Assent Date: 14.8.18
Commencement Date: Ss 4–7 on 1.2.19: s. 2(2)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Residential Tenancies Amendment Act 2018, No. 45/2018 (as amended by Nos 11/2020, 25/2020)

Assent Date: 18.9.18
Commencement Date: S. 376 on 29.3.21: Special Gazette (No. 42) 27.1.21 p. 1
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Guardianship and Administration Act 2019, No. 13/2019

Assent Date: 4.6.19
Commencement Date: S. 221(Sch. 1 item 34) on 1.3.20: s. 2(2)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Owners Corporations and Other Acts Amendment Act 2021, No. 4/2021

Assent Date: 23.2.21
Commencement Date: Ss 3–85 on 1.12.21: s. 2(2)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

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3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

No entries at date of publication.