

Owners Corporations and Other Acts Amendment Bill

Exposure Draft

EXPLANATORY MEMORANDUM

General

The Owners Corporations and Other Acts Amendment Bill 2019 amends the **Owners Corporations Act 2006**, **Retirement Villages Act 1987** and Part 5 of the **Subdivision Act 1988** to implement the outcomes of a public review that considered that legislation.

The review was part of a wider public review of the consumer-property legislation for which the Minister for Consumer Affairs, Gaming and Liquor Regulation is responsible. The proposals that emerged from the review seek to make buildings governed by owners corporations better governed, more financially responsible and sustainable and, generally, more liveable, taking into account stakeholders' experiences and industry developments since the **Owners Corporations Act 2006** commenced in December 2007.

The amendments seek to—

- rationalise the regulation of owners corporations;
- improve the quality of owners corporation managers and enhance protection for owners corporations;
- expand and improve developers' duties to the owners corporations they create and enhance protection for owners corporations;
- improve the governance and financial administration of, and internal relations in, owners corporations;
- improve and rationalise the regulation of owners corporations in retirement villages; and

- make a number of minor and technical drafting improvements to the Act.

Clause Notes

Part 1—Preliminary

- Clause 1 sets out the purposes of the amending Act, which are to amend the **Owners Corporations Act 2006**, **Retirement Villages Act 1987** and Part 5 of the **Subdivision Act 1988** to achieve the listed purposes.
- Clause 2 is the commencement provision. It provides that the amending Act will come into operation on a day or days to be proclaimed, but if not proclaimed earlier, the provisions of the amending Act will come into operation by default on 1 January 2021. This delayed commencement is necessary to ensure sufficient time for implementation of the reform package, including delivery of a training package in partnership with industry and development of any necessary amendments to the Owners Corporations Regulations 2018.

Part 2—Amendments to the Owners Corporations Act 2006

Part 2 contains clauses 3 to 82 which set out the amendments to the **Owners Corporations Act 2006** (referred to as "the Act" under this Part).

- Clause 3 subclause (1) inserts the definitions of *occupiable lot*, *services only owners corporation*, *tier four owners corporation*, *tier one owners corporation*, *tier three owners corporation*, *tier two owners corporation* and *2-lot subdivision* in section 3 of the Act, which are used in the new provisions introduced by this Bill. These new definitions are necessary to establish the four tiers of owners corporation set out in the substituted section 7 of the Act (clause 5 refers).

An *occupiable lot* is defined by exclusion, and does not include a car park, storage locker or other lot used for non-residential or commercial purposes. A *services only owners corporation* is an owners corporation for a subdivision where no land or building is designated as the common property, and either the initial owner of the subdivision has arranged for the installation of common meters which are designated as the common property, or the subdivision has a common supply or common service that

is unmetered. A **2-lot subdivision** is an owners corporation which comprises 2 occupiable lots.

Subclause (2) repeals the definition of **prescribed owners corporation**, which is no longer required. All owners corporations will now be classified in accordance with the four tiers of owners corporation detailed in section 7 of the Act.

- Clause 4 amends the note at the foot of section 4 to omit the reference to a common seal. This reference is unnecessary as owners corporations will no longer be required to have a common seal.
- Clause 5 substitutes sections 7 and 8, and inserts a new section 7A in the Act.

New section 7 provides for four tiers of owners corporations, to allow for different regulatory requirements based on the number of occupiable lots that form the owners corporation. The four tiers are as follows—

<i>Tier</i>	<i>Composition</i>
Tier one	51 or more occupiable lots, and not a services only owners corporation
Tier two	10 to 50 occupiable lots, and not a services only owners corporation
Tier three	3 to 9 occupiable lots, and not a services only owners corporation
Tier four	A 2-lot subdivision or a services only owners corporation

Where an owners corporation consists solely of non-occupiable lots (e.g. a strata car park), the tier into which it falls is to be based on the number of non-occupiable lots.

New section 7A provides exemptions from compliance with various sections of the Act for a tier four owners corporation that is a 2-lot subdivision.

New section 8 provides exemptions from compliance with various sections of the Act for tier four owners corporation that is a services only owners corporation.

- Clause 6 substitutes section 10 of the Act, which concerns the execution of documents by owners corporations.
- Subsection (1) provides for the execution of documents and doing of things by an owners corporation, in its own name or on behalf of its members, to enable it to carry out its functions, powers, rights and obligations.
- Subsection (2) provides that a document executed or thing done by an owners corporation under subsection (1) has effect as if the document was executed or the thing was done by the members of that owners corporation.
- Subsection (3) provides that an owners corporation may authorise a document to be executed by at least 2 lot owners of separate lots. Subsection (3) also removes the existing requirement for the execution of documents by the use of a common seal.
- Clause 7 inserts new section 17A into the Act, which clarifies that water that falls, is located or flows on common property is taken to be the property of the owners corporation, and provides that an owners corporation may acquire or dispose of any water rights under the **Water Act 1989**.
- Clause 8 amends the heading to Division 4 of Part 2 of the Act, substituting the words "commence a legal proceeding" for "bring legal proceedings". This ensures the language used in the Act reflects the standard terminology used in Victoria in relation to any legal proceeding.
- Clause 9 substitutes section 18 of the Act, which details the power of owners corporations to commence any legal proceeding.
- The new subsection (1) provides that, subject to subsection (2), an owners corporation must not commence any legal proceeding unless authorised to do so by special resolution. This requirement will apply to actions in the County Court and above.
- The new subsection (2) provides that where a matter is within the civil jurisdictional limit of the Magistrates' Court and an owners corporation is authorised to do so by ordinary resolution, an owners corporation can commence any legal proceeding in the Magistrates' Court; or the VCAT or any other tribunal; or another State or Territory court that corresponds to the Magistrates' Court.

Clause 10 inserts new section 18A into the Act, which provides that an owners corporation is not required to have or use a common seal, and that sections 19, 20, 21 and 22 apply only to those owners corporations which choose to have a common seal.

Clause 11 amends section 23 of the Act. Subclause (1) amends the heading of section 23 to refer to "annual fees" rather than "fees" to ensure consistent usage of this term in the Act.

Subclause (2) substitutes section 23(3) and section 23(3A), and inserts new section 23(3B) into the Act.

New subsection (3) provides that, subject to subsection (3A), the fees set must be based on lot liability.

New subsection (3A) allows an owners corporation to levy an additional annual fee on a lot owner where the owners corporation has incurred additional costs arising from the particular use of the lot by the lot owner and where an annual fee set on a lot liability basis would not adequately take account of those additional costs.

Subsection (3B) provides that additional annual fees levied under subsection (3A) must be levied on the basis that the lot owner of the lot which benefits more from its use pays more. This is consistent with the benefit principle for extraordinary fees outlined in section 24 of the Act.

Clause 12 inserts new section 23A into the Act to enable an owners corporation to levy fees in relation to insurance.

New section 23A(1) provides that, in addition to 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 of the Act. Subsection (2) provides that such fees must be based on lot entitlement.

New section 23A(3) provides that owners corporations may levy fees on individual lot owners to cover the costs of—

- (a) an excess amount or an increased premium payable on an insurance claim (if the claim is caused by a culpable or wilful act or the gross negligence of the lot owner, their lessee or an invitee of either the lot owner or lessee);

- (b) damage to the common property that is caused by a lot owner or a lot owner's lessee which is either not covered by insurance, or the cost of which is less than the excess amount payable on an insurance claim in relation to the damage; or
- (c) an excess amount on an insurance claim which solely relates to a particular lot owner's lot.

New section 23A(4) provides that the owners corporation may determine the times for payment of fees levied under either subsection (1) or (3).

Clause 13 amends the heading of section 24 of the Act, section 24(2) and section 24(2A) to refer to both fees "and charges". This ensures consistent terminology throughout the entire section.

Subclause (4) inserts new section 24(2B) into the Act which enables an owners corporation to 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.

Clause 14 subclause (1) amends section 28(2) to provide that the operation of this provision is subject to sections 24, 49 and 53 of the Act.

Subclause (2) repeals section 28(3) of the Act, as it is redundant in light of amendments to sections 24 and 53 of the Act by the **Owners Corporations Amendment Act 2013**, No. 78/2013. These amendments inserted new subsections 24(2) and (2A), and 53(1A) and (1B), enabling for fees to be levied under these provisions in accordance with the benefit principle.

Clause 15 substitutes the word "send" with "give" in section 32(1) of the Act, in line with current drafting practices.

Clause 16 substitutes section 34 of the Act, which concerns the preparation of financial statements by an owners corporation.

New section 34(1) provides that tier one and tier two owners corporations must prepare annual financial statements for presentation at each annual general meeting in accordance with the Australian Accounting Standards. The requirement that statements be prepared in accordance with the Australian Accounting Standards is intended to facilitate effective audit and review under substituted section 35, given members of the major professional associations for accountants (CPA Australia,

Chartered Accountants Australia and New Zealand and the Institute of Public Accountants) have a professional obligation to ensure entities which they are involved with comply with the Standards in preparing general financial reports.

New section 34(2) provides that tier three owners corporations are only required to prepare annual financial statements for any financial year in which they levy fees.

New section 34(3) provides that, for the purposes of this section, the term *Australian Accounting Standards* has the same meaning as in section 3 of the **Associations Incorporation Reform Act 2012**, which is "the standards issued by the Australian Accounting Standards Board for the purposes of the preparation of financial reports as in force for the time being and including any modifications prescribed by the regulations".

Clause 17 substitutes section 35 of the Act and inserts new section 35A into the Act.

New section 35 details the circumstances in which a tier one owners corporation, tier two owners corporation, tier three owners corporation and tier four owners corporation must, or may, cause its financial statements to be audited or independently reviewed. A person who audits or reviews an owners corporation's financial statements under this provision must provide a written report to the owners corporation. Persons with a direct or indirect personal or financial interest in an owners corporation must not be engaged to audit or review its financial statements.

New section 35A enables a tier one owners corporation with more than 100 lots to apply in writing to the Director of Consumer Affairs Victoria for an exemption from the requirement to have its financial statements audited under section 35(1). The Director may grant an exemption subject to conditions, and may vary or revoke an exemption at any time by written notice.

Clause 18 substitutes section 36 of the Act, which provides for the preparation and approval of maintenance plans by owners corporations.

Subsection (1) requires a tier one owners corporation to prepare and approve a maintenance plan for the property for which it is responsible.

Subsection (2) provides that a tier two owners corporation, a tier three owners corporation or a tier four owners corporation may prepare and approve a maintenance plan for the property for which it is responsible. However, such owners corporations are not required to do so under this section.

- Clause 19 inserts new section 37(1A) into the Act, which allows for an owners corporation to amend an approved maintenance plan by ordinary resolution.
- Clause 20 repeals section 41 of the Act, which provides that the maintenance fund of an owners corporation must be used for the implementation of the maintenance plan of the owners corporation. Section 41 is unnecessary as use of the maintenance fund will be regulated by the new approved maintenance plan provisions.
- Clause 21 subclause (1) substitutes the words the words "approved maintenance plan" for "maintenance plan" (where twice occurring) within section 42 of the Act, to reflect the change of terminology in section 36(1) of the Act.
- Subclause (2) inserts new subsections (2) and (3) into section 42 of the Act, to provide for the determination of the amount of the annual fees payable under subsection (1)(a). Such fees must be adequate to fund the approved maintenance plan.
- Clause 22 amends section 44 to clarify that extraordinary payments may be made from the maintenance fund, other than in accordance with an approved maintenance plan, if the owners corporation approves the payment by special resolution.
- Clause 23 substitutes the words "maintenance plan" for "approved maintenance plan" in section 45(2)(c), to reflect the change of terminology in section 36(1) of the Act.
- Clause 24 inserts new section 47A into the Act, which clarifies that, subject to section 56 of the **Equal Opportunity Act 2010**, lot owners must not repair, alter or maintain the common property, or services that are for the benefit of more than one lot or the common property. This prohibition does not apply where an owners corporation has expressly authorised a lot owner to carry out the repairs and maintenance under sections 46 or 47 of the Act as an agent of the owners corporation.

- Clause 25 substitutes the word "undertaken" with the word "carried out" in section 49(1) of the Act, in line with current drafting practices.
- Clause 26 inserts new section 50(2) into the Act, which enables an owners corporation to authorise a person to enter a lot or a building on a lot to carry out repairs, maintenance or other works where necessary. This amendment is necessary as there is no existing specific power under the Act for an owners corporation to authorise a person to enter private lots where that is necessary to repair or maintain common property.
- Clause 27 inserts new section 51(2A) into the Act, which requires the occupier of a lot, on receiving notice under this section, to grant entry to the lot or a building on the lot to a person who has been authorised by the owners corporation under section 50.
- Clause 28 inserts a new Division 5A into the Act, which comprises sections 53A to 53E.

The new Division 5A provides for owners corporations to dispose of goods abandoned on common property. This is necessary as the Act currently contains no provisions regarding the disposal of abandoned goods.

New section 53A enables an owners corporation to dispose of goods abandoned on common property as if the goods were "uncollected goods", owners corporations were "receivers" and the persons abandoning goods were "providers" under sections 60 to 65 and 73 to 76 of the **Australian Consumer Law and Fair Trading Act 2012**.

For the sake of clarity, an owners corporation is only permitted to retain from the proceeds of sale of abandoned goods an amount not exceeding the cost to dispose of the goods. As per section 73(2) of the **Australian Consumer Law and Fair Trading Act 2012**, any surplus funds are to be dealt with in accordance with the **Unclaimed Money Act 2008**.

New section 53B details the requirements for providing notice of intention to dispose of goods abandoned on common property and how the notice may be given to the person who abandoned the goods or who has a publically registered interest in the abandoned goods.

New section 53C provides that an owners corporation may remove goods abandoned on common property to a safe place if the goods block reasonable access to a lot or the common property, and the owners corporation has made a reasonable attempt to locate or communicate with the person who abandoned the goods in order to give them a notice of intention to dispose of the goods.

New section 53D prohibits an owners corporation from disposing of goods in circumstances where a dispute exists between the person who abandoned the goods and the owners corporation in question, and the owners corporation has made an application to VCAT in relation to the dispute.

New section 53E provides that an owners corporation that disposes of goods under Division 5A is not liable in relation to the goods by reason of the disposal.

- Clause 29 amends section 59(1) of the Act, which requires owners corporations to take out reinstatement and replacement insurance for all buildings on the common property. The amendment restricts the application of this provision to tier one owners corporations and tier two owners corporations.
- Clause 30 amends section 60(3) of the Act to increase the limit of liability of the insurance the owners corporation has under section 60(2), to a minimum of \$20 000 000.
- Clause 31 inserts new sections 61(3) and (4) into the Act, to clarify the obligations on owners corporations to take out insurance for lots in multi-level developments.

New section 61(3) clarifies that, for plans of subdivision with separate buildings and one or more of these is a multi-level development with its own owners corporation, an owners corporation must only take out reinstatement and replacement insurance and public liability insurance in respect of the multi-level development for which that owners corporation is liable. This ensures that an owners corporation for each multi-level development on the plan is not required to take out insurance for the entire plan of subdivision, rather than just the building for which it liable. For the sake of clarity, section 64 of the Act would still apply where an unlimited owners corporation takes out insurance for the entire plan of subdivision.

New section 61(4) provides that an owners corporation on a plan of subdivision for multiple single dwellings may resolve by unanimous resolution that the lot owner of each single dwelling is responsible for insuring their lot.

Clause 32 substitutes section 65(1) of the Act, which concerns the valuation of buildings.

New section 65(1) provides that an owners corporation, other than a tier four owners corporation, must obtain a valuation of all buildings that it is liable to insure.

New section 65(1A) provides that an owners corporation of a multi-level development referred to in section 61(3) is only required to obtain a valuation of the multi-level development on the plan of subdivision for which it is liable to insure.

Clause 33 subclause (1) substitutes the words "a maintenance plan" for "a maintenance plan, if any" in section 67(d) of the Act. This reflects the expectation that the initial owner should prepare a maintenance plan to be provided at the first meeting of the owners corporation, regardless of whether or not the owners corporation in question is required to have a maintenance plan going forward.

Subclause (2) substitutes section 67(j) of the Act to remove the requirement that the common seal of the owners corporation be provided at the first meeting of the owners corporation, and to specify a range of additional documents that must be provided at the first meeting of the owners corporation. These are—

- the building maintenance manual;
- an asset register;
- copies of any warranties or, if copies cannot be provided, details thereof; and
- copies of any specifications, reports, certificates, permits, notices or orders in relation to the plan of subdivision.

Subclause (3) inserts new section 67(2) into the Act, which provides that a warranty must be assigned to the owners corporation if the warranty holder is the sole beneficiary of the terms of the warranty. This addresses circumstances where only the party who holds a warranty is entitled to make a claim on it,

ensuring that owners corporations are not inadvertently prevented from making a warranty claim on items requiring repair or replacement.

Clause 34 inserts new sections 67A, 67B and 67C into the Act.

New section 67A details the types of relationships and transactions that must be disclosed by an applicant for registration of the plan of subdivision at the first meeting of the owners corporation.

New section 67B provides for the expiry of any contract appointing a third party manager entered into by the applicant for registration of the plan of subdivision at the first meeting of the owners corporation. This section also provides that for any other contract entered into that relates to the owners corporation and benefits the applicant for registration, any term of that contract must not exceed 3 years in duration. For the purposes of this section, a *third party manager* is defined as a person who is neither an initial owner or a lot owner of the owners corporation.

New section 67C provides for the keeping of minutes of the first meeting of the owners corporation and the recording of any disclosure made under section 67A. The minimum information to be recorded in the minutes is the information referred to in section 81(2) of the Act.

Clause 35 subclause (1) amends section 68(3) of the Act, which currently provides that the obligations of an initial owner set out in sections 68(1) and 68(2) apply where the initial owner owns the majority of the lots affected by the owners corporation and until the end of the period of 5 years following the plan of subdivision.

The amendments provide that sections 68(1) and 68(2) apply where an initial owner holds a majority of lot entitlements, rather than a majority of lots, and increases the relevant period following the registration of the plan of subdivision from 5 years to 10 years.

Subclause (2) inserts new sections 68(4A) and (4B) into the Act.

New section 68(4A) prohibits an initial owner of land affected by an owners corporation or an associate of an initial owner from being appointed as a manager, or voting on resolutions of an owners corporation in relation to defects in or on a building on the plan of subdivision.

New section 68(4B) prohibits the initial owner of land affected by an owners corporation from—

- (a) proposing an unreasonable or unsustainable annual budget for the owners corporation;
- (b) designating areas which would normally be considered common property or services as private lots; and
- (c) receiving payments from the manager of the owners corporation in relation to the manager's contract of appointment.

Subclause (3) substitutes 68(5), which defines associate, which is used in new section 68(4A), and maintains the existing definition of *initial owner*.

Clause 36 amends section 77 to substitute "total number of occupiable lots" for "total votes" (where twice occurring). This is a technical amendment, intended to ensure that a quorum for an annual general meeting is either at least 50% of the total number of occupiable lots, or, if that is not available, at least 50% of the total lot entitlement.

Clause 37 inserts new sections 78(1A), (1B) and (1C) into the Act. Section 78 sets out when a general meeting can proceed without a quorum.

New section 78(1A) provides that 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.

New section 78(1B) provides the matters which a manager must not pass an interim resolution in relation to.

New section 78(1C) enables an owners corporation, by ordinary resolution, to exclude or alter the power of the manager to make an interim resolution under section 78(1A).

Clause 38 amends section 85 of the Act to ensure consistency with the notice requirements for ballots of the entire owners corporation are consistent with the notice requirements for committee ballots under the amended sections 111(2) and (3) of the Act (clause 45 refers).

Clause 39 repeals section 86(1) of the Act, which details how a person may vote in a ballot. Section 86(1) is unnecessary as ballot voting procedures are detailed in the new Division 6 of Part 4 of the Act.

Subclause (2) inserts a note at the foot of section 86(2) of the Act, which provides that section 88 provides for the manner in which a lot owner may vote on a resolution of the owners corporation by ballot.

Clause 40 substitutes Division 6 of Part 4 of the Act, which details voting on a resolution of an owners corporation. The new Division 6 of Part 4 largely replicates the existing voting requirements in the Act, but reorganises them into a single Division for ease of reference.

New section 87 provides that there is to be one vote for each lot for any resolution of an owners corporation, whether that resolution is voted on by meeting or by ballot. Joint owners of a single lot have only one vote between them in respect of that lot.

New section 88 details how a person may vote on a resolution of the owners corporation by ballot.

New section 89 details the manner in which a vote of the owners corporation may be carried out at a meeting.

New section 89A details the circumstances in which the chairperson may have a second vote or the casting vote.

New section 89B details the circumstances in which a lot owner who is in arrears for any amount owed to an owners corporation can vote on a resolution.

New section 89C provides for a lot owner to authorise a person to act as a proxy.

New section 89D restricts the number of lot owners on behalf of whom a proxy may vote on a resolution.

New section 89E details the steps to be taken by a lot owner to revoke an authorisation of a proxy.

New section 89F details the circumstances in which 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.

New section 89G provides that a person must not require or demand that a lot owner give authorisation for that person to vote under a power of attorney or proxy, and imposes a penalty of 60 penalty units for contravention of this provision.

New section 89H provides that any term of a contract of sale that limits or controls the voting rights of the purchaser of a lot in relation to the owners corporation is void.

Clause 41 repeals sections 91, 92, 93 and 94 of the Act.

Section 91 currently provides that there is to be one vote for each lot, which is unnecessary as new section 87 deals with votes for each lot.

Section 92 of the Act currently details requirements about voting at a meeting, which is unnecessary as new section 89 details these requirements.

Section 93 of the Act currently details the circumstances in which the chairperson may have a second vote or the casting vote, which is unnecessary as new section 89A deals with this issue.

Section 94 of the Act currently provides for the voting of a lot owner who is in arrears for any amount owed to the owners corporation, which is unnecessary as new section 89B deals with this issue.

Clause 42 inserts new section 97(1A) into the Act, which provides for a new form of interim special resolution where the votes in favour of a special resolution fail to reach the requirements under section 96, but there is a quorum at the meeting and there are no votes against the resolution.

Clause 43 amends section 100 of the Act, which deals with the election of a committee at an annual general meeting.

Paragraphs (a) and (b) change the threshold number of lots where an owners corporation must or may elect a committee at an annual general meeting. Owners corporations with 10 or more lots (tier one and two owners corporations) must elect a committee, whereas those with fewer than 10 lots (tier three and four owners corporations) may elect a committee.

Clause 44 amends section 103 of the Act, which deals with memberships of committees.

Subclause (1) reduces the maximum number of members of a committee of an owners corporation from 12 to 7 members.

Subclause (2) inserts a new section 103(1A) into the Act, which provides that an owners corporation may resolve, by ordinary resolution, to have more than 7 members, but not more than 12 members.

Subclause (3) substitutes the words "the owner is" for "the lot owner or the proxy for the lot owner is" in section 103(7)(b), to clarify the operation of this provision.

Clause 45 substitutes section 111(2) and (3) of the Act.

New section 111(2) clarifies that the chairperson or the secretary must give notice in writing of the ballot to each member of the committee, and that the notice may be given electronically.

New section 111(3) details what the notice must state.

Clause 46 amends section 113 to clarify that a resolution of the committee of an owners corporation has effect as a resolution of the owners corporation only where the matter is within the functions and powers of the committee.

Clause 47 substitutes section 117 of the Act, which details duties of members of committees and subcommittees.

New section 117 adds an additional obligation for members of a committee or sub-committee to act in the interests of the owners corporation.

Clause 48 substitutes section 119(1) of the Act with new sections 119(1), (1A), (1B), (1C) and (1D).

Section 119(1) provides that a tier one owners corporation with more than 100 lots must appoint a person to be the manager of the owners corporation

Subsection (1A) provides that, despite subsection (1), a tier one owners corporation with more than 100 lots may, by special resolution, opt out of the requirement to appoint a manager.

Subsection (1B) provides that a decision to opt out under subsection (1A) may later be reversed, and a person appointed to be the manager of the owners corporation, by ordinary resolution at a later date.

Subsection (1C) provides that a tier one owners corporation with between 51 and 100 lots, a tier two owners corporation, a tier three owners corporation or a tier four owners corporation may appoint a person to be the manager of the owners corporation, but is not required to do so.

Section 119(1D) imposes a maximum 3 year limit on the term of appointment of a manager of an owners corporation.

Clause 49 inserts new section 119A into the Act, which relates to the contract of appointment of the manager of an owners corporation.

Subsection (1) provides that a contract of appointment of the manager of an owners corporation must not include any of the following terms—

- (a) a term which imposes procedural restrictions on the revocation of the manager's appointment (i.e. requiring any resolution other than a simple majority of votes, requiring a general meeting to be convened, or requiring any other procedural step);
- (b) a term which enables the manager to renew the contract of appointment at their option;
- (c) a term requiring a tier one owners corporation with more than 100 lots to give 3 months' or more notice of its intention to revoke the manager's appointment;
- (d) a term providing for the automatic renewal of the contract of appointment if the owners corporation fails to give notice of its intention not to renew the contract; and
- (e) a term that restricts the ability of an owners corporation to refuse consent to the assignment of the contract of appointment to a person appointed as the manager, other than one which provides that such consent must not unreasonably withheld.

Subsection (2) provides for the renewal of a contract of appointment of a manager where an owners corporation fails to give notice of its intention to renew the contract, subject to certain notice requirements regarding termination.

Subsection (3) provides that, where an owners corporation withholds consent to the assignment of the contract of appointment to a person who is appointed as manager and is a full member of a professional body or association approved by the Director, the owners corporation is taken to be unreasonably withholding consent for the purposes of section 119A(1)(e).

Clause 50 amends section 122 of the Act, which details the duties of a manager.

Subclause (1) amends section 122(1) to insert new paragraphs (d) to (f), imposing additional obligations on a manager to—

- take reasonable steps to ensure that goods or services procured by the manager on behalf of the owners corporation are procured at competitive prices and on competitive terms;
- not exert pressure on any member of the owners corporation in order to influence the outcome of a vote; and
- disclose any commission, payment or other benefit, in accordance with section 122B of the Act, before entering into a contract 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.

Subclause (2) amends existing section 122(2) of the Act to substitute paragraph (b) and insert new paragraphs (c) and (d). Subclause (3) inserts new section 122(3) and (4).

Under the substituted section 122(2)(b), where subsection (3) applies, a manager to account separately for money held by the manager for each owners corporation on the plan of subdivision. Furthermore, new paragraph (c) requires that all money held on behalf of separate owners corporations on trust must be held in separate bank accounts unless subsection (3) applies. Under new paragraph (d), if an owners corporation makes a reasonable request, the manager must provide copies of financial statements

of such bank accounts for any period within 3 years preceding the request.

New section 122(3) provides that a manager may hold money on behalf of separate owners corporations on trust in the same bank account if each owners corporation is on the same plan of subdivision and has consented to the money being held in the same account. A manager may also hold money for separate owners corporations in the same bank account if it is a statutory trust account held by a licensed estate agent, an Australian legal practitioner, or a licensed conveyancer.

New section 122(4) clarifies that money held by a manager on behalf of an owners corporation on trust for the owners corporation includes any interest earned on that money.

Clause 51 inserts new sections 122A and 122B into the Act.

New section 122A concerns the disclosure of a beneficial relationship with a supplier by a manager of an owners corporation.

Subsection (1) details the circumstances in which a manager is deemed to have a beneficial relationship with a supplier of goods or services for the purposes of section 122A.

Subsection (2) imposes an obligation on a manager of an owners corporation to disclose to the owners corporation 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.

Subsection (3) requires disclosure under subsection (2) to be in writing and details when the disclosure must be given.

Subsection (4) details disclosure arrangements for emergency situations where it is not reasonably practicable for a manager to disclose a beneficial relationship in accordance with subsection (3).

Subsection (5) provides that a manager who fails to disclose a beneficial relationship in accordance with section 122A is taken to breach the duty of a manager under section 122(1)(c), which provides that a manager must not make improper use of their position to gain advantage for themselves or any other person, whether directly or indirectly.

Subsection (6) describes the circumstances in which subsection (5) does not apply.

Subsection (7) defines *associate*, *control* and *executive officer* for the purposes of section 122A.

New section 122B concerns the disclosure, by a manager of an owners corporation, of commissions, payments or other benefits to be received under a contract for the supply of goods or services to an owners corporation.

Subsection (1) provides that the new section applies to any contract for the supply of goods or services to an owners corporation under which the manager is entitled to receive a commission, payment or other benefit (other than from the owners corporation itself).

Subsection (2) requires that, before a contract under subsection (1) is entered into, the manager must provide written notice to the chairperson of the owners corporation disclosing the commission, payment or other benefit to be received under the contract.

Subsection (3) provides that, if the contract is an insurance contract and the commission the manager is entitled to receive is a percentage of the premium payable, the manager must provide written notice to the chairperson of the owners corporation disclosing the percentage of the premium to be received rather than the actual amount of the commission.

Subsection (4) provides that, if a contract under subsection (3) is renewed and the percentage of the premium payable to the manager increases, the manager must make further disclosures of the increased percentage of the premium by written notice to the chairperson of the owners corporation.

Subsection (5) provides that a manager who fails to make a required disclosure under this section is taken to breach their duty under new section 122(1)(f).

Clause 52 amends section 126 of the Act, which concerns a report of the manager's activities.

Subclause (1) amends section 126(1) to require the manager to submit a report of all moneys 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.

Subclause (2) amends section 126(2) to expand the details that must be included in the report required by section 126(1).

Subclause (3) inserts a new section 126(3), which provides that, for the purposes of section 126(2)(c), the manager must provide an estimate where the specific amount of a commission, payment or other benefit cannot be reasonably ascertained.

Clause 53 substitutes the note at the foot of section 135, which currently refers to section 113(2) of the **Transfer of Land Act 1958**. This reference is unnecessary as section 113(2) has been repealed.

Clause 54 substitutes the reference to section 87 with a reference to 89C. The amendment is necessary due to the restructuring of Division 6 of Part 4 of the Act.

Clause 55 inserts new section 138B into the Act.

New section 138B provides an owners corporation with power to make rules in respect of proposed work to renovate or alter the external appearance of a lot.

Subsection (1) sets out, subject to subsection (2), the circumstances where, subject to the requirements of subsection (2), an owners corporation may make rules in respect of proposed works to renovate or alter the external appearance of a lot. However, subsection (2) prevents an owners corporation from making rules that unreasonably prohibit the installation of sustainability items on the exterior of a lot.

Subsection (3) details, for the purposes of subsection (2), circumstances that would constitute reasonable and unreasonable prohibitions on the installation of sustainability items on the exterior of the lot.

Subsection (4) defines the term *sustainability item*.

Clause 56 substitutes section 140(a) of the Act, which currently provides that a rule of an owners corporation that unfairly discriminates against a lot owner or an occupier of a lot has no effect.

New section 140(a) expands the operation of the provision to also include rules that are oppressive to, or unfairly prejudicial to, a lot owner or an occupier of a lot.

Clause 57 inserts new section 141A into the Act, which deals with invitees to a lot.

Section 141A(1) requires an occupier of a lot to ensure that any invitee to the lot complies with the rules of the owners corporation.

Section 141A(2) provides that the occupier of the lot and the invitee are jointly and severally liable for any penalty or compensation arising from breaches of the rules of the owners corporation by an invitee to a lot. However, subsection 141A(3) provides that an occupier of a lot is not taken to be liable for an invitee's breach where the occupier provides the invitee with a copy of the rules of the owners corporation.

Clause 58 inserts new Part 8A into the Act, which concerns owners corporations incorporated in respect of land used or to be used for the purposes of a retirement village.

Section 143A details the application of Part 8A of the Act, including that any 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 section.

Section 143B provides that 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 the majority of lot entitlements of the owners corporation is not entitled to vote on specified fee-related resolutions.

Section 143C provides that section 42(2), which concerns payments into an approved maintenance fund, does not apply if maintenance charges are collected as part of the exit fees to be paid by residents of a retirement village. This ensures consistency with current practice for retirement villages covered by the Act, where maintenance charges are often collected as a lump sum at the end of a residency, rather than being levied on an annual basis. For the purposes of this provision, the term maintenance charges has the same meaning as under the **Retirement Villages Act 1986**.

Section 143D provides that section 67B(2), which concerns contracts entered into by an applicant for registration of the plan of subdivision prior to the first meeting, does not apply to the applicant for registration of the plan of subdivision in respect of land used for the purposes of a retirement village.

Section 143E provides that 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. This ensures consistency with current practice for retirement villages covered by the Act, where the initial owner will often continue to operate and manage a retirement village on behalf of its owners corporation.

Section 143F provides that despite section 119(1D), which provides that a person cannot be appointed as manager of an owners corporation for more than 3 years, an owners corporation under Part 8A can appoint a manager of an owners corporation for a period that exceeds 3 years. This ensures flexibility to accommodate current practice for retirement villages covered by the Act.

Section 143G allows for an owners corporation under Part 8A to include any of the terms in section 119A(1) in a contract of appointment of the manager of the owners corporation. This ensures flexibility to accommodate current practice for retirement villages covered by the Act.

Section 143H provides for the making of rules of owners corporations of retirement villages under this Part. Despite the requirements of subsections 138(1) and (2), an owners corporation under Part 8A may only make, amend or revoke rules by special resolution passed in accordance with the **Retirement Villages Act 1986**. At meetings where such special resolutions are being considered, managers are prohibited from participating in consideration of the special resolution (except to the extent resolved by residents present at the meeting) or voting on it. However, a manager or owner is still permitted to convene a meeting of the residents of the retirement village to consider the making, amending or revocation of the rules of the owners corporation.

Clause 59 amends section 146(2) to require an owners corporation to provide a copy of any record of the owners corporation at the request of a person entitled to inspect the records and on payment of a reasonable fee. Currently there is no requirement for an owners corporation to do so.

- Clause 60 inserts new section 150(2A) to prohibit a lot owner from authorising a representative who is not a lot owner from requesting any part of the register for a commercial purpose without the prior consent of the owners corporation.
- Clause 61 amends section 151(4)(b)(v) to insert a full stop after paragraph (b)(v), which is necessary as the paragraph below this paragraph is to be repealed; and repeals section 151(4)(c), which requires an owners corporation certificate to be sealed with the owners corporation's common seal. The reference to a common seal is unnecessary as owners corporations are no longer required to have a common seal.
- Clause 62 amends section 152(4) to insert the words "or the recovery of any, fees, charges, contribution, or amount owing to an owners corporation under section 28" after "injury". Combined with new section 153(1A), this is intended to clarify that the Part 10 dispute resolution process does not apply to fee recovery actions, which are provided for under Division 1 of Part 3 of the Act.
- Clause 63 subclause (1) inserts a new section 153(1A), which provides that section 153 does not apply to the recovery of any fees, charges, contribution, or amount owing to an owners corporation under section 28, and inserts a note stating that Division 1 of Part 3 provides for the recovery of fees and other amounts. Combined with the amended section 152(4), this is intended to clarify that the Part 10 dispute resolution process does not apply to fee recovery actions.
- Subclause (2) substitutes the words "the alleged breach" for "the breach" in section 153(2)(b) to make the terminology consistent throughout section 153.
- Subclause (3) substitutes the words "a complaint made under section 152" in section 153(3) for "the alleged breach".
- Clause 64 amends section 158 of the Act to insert a note specifying that the **Electronic Transactions (Victoria) Act 2000** enables notice to be given electronically.
- Clause 65 amends section 162 of the Act, which details the types of disputes and other matters arising under the Act that VCAT may hear and determine.

The amendments clarify that VCAT may hear a dispute or matter relating to a term of a contract of appointment of the manager of an owners corporation, or the disposal by an owners corporation of goods abandoned on the common property.

Clause 66 amends section 164 to substitute the term "an alleged breach" for "a breach" to ensure consistency with the amended section 153.

Clause 67 amends section 165 of the Act, which details the orders that VCAT may make in determining an owners corporation dispute.

Subclause (1) amends section 165(1) to insert new paragraphs (ca) and (n), which provide that VCAT may make orders regarding the recovery of reasonable costs incurred in recovering unpaid amounts from lot owners (other than costs in the proceeding), and requiring an occupier of a lot to grant entry to a person authorised by an owners corporation for the purposes of section 50, respectively.

Subclause (1) also repeals existing section 165(1)(ba) in light of the new Division 1B of Part 11 inserted by clause 70, which supersedes this paragraph.

Subclause (2) inserts a new section 165(4), which clarifies that this section does not affect VCAT's power to award costs under section 109 of the **Victorian Civil and Administrative Tribunal Act 1998**.

Clause 68 subclause (1) amends section 166 which enables VCAT to impose a civil penalty where a person has failed to comply with a rule of an owners corporation that is binding on the person. The amendment increases the maximum civil penalty from \$250 to \$1100.

Subclause (2) repeals the note at the foot of section 166, which provides that penalties imposed under section 166 will be paid into the Victorian Property Fund. The repeal is necessary as penalties are now to be paid to the owners corporation.

Clause 69 inserts section 167(2) into the Act, which requires VCAT to consider Part 2-3 of the Australian Consumer Law (Victoria) in determining whether a term of a contract of appointment of the manager of an owners corporation is fair.

Clause 70 inserts new Division 1B of Part 11 into the Act. Division 1B concerns any proceeding commenced, prosecuted, defended or discontinued by a lot owner on behalf of an owners corporation, and consists of sections 169I to 169J.

New section 169I(1) enables a lot owner to apply to VCAT for an order to commence, prosecute, defend or discontinue any proceeding on behalf of the owners corporation.

New section 169I(2) provides the circumstances under which a lot owner and any other party has the burden of proving why VCAT should make an order under subsection (1).

New section 169J provides for the making of orders by VCAT relating to an application under section 169I.

Clause 71 inserts new paragraph 179(d) into the Act.

New paragraph 179(d) provides that a person is not eligible to be registered as a manager of an owners corporation under this Part where the person has been convicted or found guilty of an offence of the type specified in the provision within the past 10 years. However, a person to whom the new paragraph applies may be granted permission to be registered as an owners corporation manager if the Business Licensing Authority is satisfied that it is not contrary to the public interest to do so. New section 182A, inserted by clause 72, sets out the process for applying to the Business Licensing Authority to be registered as an owners corporation manager despite a criminal record.

Clause 72 inserts new section 182A into the Act, concerning permission to be registered as a manager despite a criminal record.

Section 182A(1) allows for a person who has been convicted or found guilty of an offence described in section 179(d) to apply to the Business Licensing Authority for permission to be registered as a manager.

Section 182A(2) details the requirements of an application under section 182A(1).

Section 182A(3) details what the Business Licensing Authority may do when considering an application under section 182(1).

Section 182A(4) describes when the Business Licensing Authority may refuse to consider an application.

Section 182A(5) provides that 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 to do so.

Clause 73 inserts new section 185A into the Act.

Section 185A(1) requires a registered manager to be covered by professional indemnity insurance at all times.

Section 185A(2) requires a registered manager to notify the Business Licensing Authority if they cease to be covered by professional indemnity insurance.

Clause 74 amends section 186 of the Act, which concerns the automatic cancellation of a person's registration as a manager.

Section 186(2) provides that subject to section 186A, a person's registration as a manager is automatically cancelled after 30 days where the person is convicted or found guilty of an offence of the type listed in paragraphs (a) to (e).

Section 186(3) details when a conviction or finding of guilt of the person takes effect for the purposes of subsection (2).

Section 186(4) provides that where a person has made an application under section 186A within the required 30 day period, the person's registration as a manager will only be automatically cancelled where the application is withdrawn, or if it is refused by the Business Licensing Authority.

Section 186(5) provides for the automatic cancellation of a person's registration as a manager 30 days after a person fails to be covered by professional indemnity insurance in accordance with section 185A.

Clause 75 inserts new sections 186A and 186B into the Act.

New section 186A(1) enables a person who is convicted or found guilty of an offence of a type listed in section 186(2) to apply within the 30 day period to the Business Licensing Authority for permission to continue to be registered as a manager.

Section 186A(2) specifies the required form and other requirements of an application under section 186A(1).

Section 186A(3) gives the Business Licensing Authority power to conduct inquiries, require the disclosure of further information by the applicant, and seek advice from any other person or body as it thinks fit in relation to an application under this section.

Section 186A(4) details when the Business Licensing Authority may refuse to consider an application under section 186A(1).

Section 186A(5) provides that the Business Licensing Authority may permit an applicant to continue to be registered if it is satisfied that it is not contrary to the public interest for it to do so.

New section 186B provides for the imposition of conditions by the Business Licensing Authority when giving its permission under section 182A(5) or 186A(5) of the Act.

Section 186B(1) allows the Business Licensing Authority to impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.

Section 186B(2) allows the Business Licensing Authority to impose, vary or revoke conditions in respect of the permission at any time.

Section 186B(3) creates an offence with a penalty of 25 penalty units for non-compliance with any conditions imposed in respect of the permission.

Section 186B(4) allows the Business Licensing Authority to revoke a permission where it is satisfied that a condition has been contravened.

Section 186B(5) enables the Business Licensing Authority to seek and use information and advice from any source as it sees fit before taking action under this section.

Clause 76 repeals section 199 of the Act, which details the extent to which **Australian Consumer Law and Fair Trading Act 2012** applies to Part 12 of the Act. This amendment is necessary as a new section 199 concerning the application of the **Australian Consumer Law and Fair Trading Act 2012** is inserted by clause 77.

- Clause 77 inserts a new section 199 into Part 13 of the Act, which details the application of the **Australian Consumer Law and Fair Trading Act 2012** to the Act. This ensures the **Australian Consumer Law and Fair Trading Act 2012** applies to the Act in its entirety, rather than just Part 12 of the Act as was previously the case.
- Clause 78 inserts new section 200A into the Act, which clarifies how documents may be given to or served on an owners corporation under the Act.
- Clause 79 amends section 201 of the Act, which concerns the payment of money into the Victorian Property Fund. The amendment excludes civil penalties under section 166 of the Act from being paid into the Victorian Property Fund. These penalties are now to be paid to the relevant owners corporation.
- Clause 80 amends section 203 of the Act. Subclause (1) amends the heading of section 203 to substitute the words "commence a proceeding" for "bring proceedings". This ensures the language used in the Act reflects the standard terminology used in Victoria in relation to any legal proceeding.
- Subclause (2) makes a range of amendments to section 203(1) and (2) to ensure the language used in the Act reflects the standard terminology used in Victoria in relation to any legal proceeding. All instances of "bring", "bringing" and "brought" are substituted for "commence", "commencing" and "commenced", respectively. The term "proceedings" is to be replaced with the singular "proceeding".
- Clause 81 inserts a new Part 14 into the Act. Part 14 contains transitional and savings provisions and comprises new sections 206 to 210.
- New section 206 defines **2019 Act** and **commencement day** for the purposes of Part 14.
- New section 207 delays the introduction of the requirement to have a maintenance plan under the new section 36(1) for tier one owners corporations with more than 100 lots (until 12 months after commencement) and tier one owners corporations with between 51 and 100 lots (until 24 months after commencement).

New section 208 provides that where a contract of appointment of a manager of an owners corporation is entered into or renewed on or after the commencement day, any term referred to in section 119A(1) as inserted by the 2019 Act is void on and after the commencement day.

New section 209 provides that sections 34, 35 and 35A regarding financial statements apply only in relation to a financial year commencing on or after the commencement day. Sections 34 and 35 as in force prior to commencement continue to apply in relation to a financial year which commenced prior to commencement of the 2019 Act amendments.

New section 210 provides for a review of the amendments made by the 2019 Act, requiring the Minister to cause a review to be undertaken at least 2 years after its commencement and no later than 5 years after that commencement. The review must consider the operation of the amendments made by the 2019 Act in accordance with terms of reference determined by the Minister, including how the amended Act has operated and whether further or other amendments are required. The reviewer must provide a written report to the Minister. The Minister must cause the report to be tabled in Parliament as soon as practicable after the review is completed.

Clause 82 amends Schedule 1 of the Act, which sets out the matters for or with respect to which an owners corporation may make rules by special resolution.

Subclause (1) inserts new clause 1.5, which gives an owners corporation the power to make rules which require advice to be given to occupiers about fire safety procedures and the operation of fire alarm systems.

Subclause (2) inserts new clause 3.5, which gives an owners corporation the power to make rules regarding payment of fees by instalments by lot owners in financial difficulty.

Subclause (3) amends clause 4.1 to give an owners corporation the power to make rules regarding access to the common property, as well as its use.

Subclause (4) amends clause 4.2 to give an owners corporation the power to make rules regarding access to equipment, services and amenities on common property, as well as their use.

Subclause (5) inserts new clause 7.3, which gives an owners corporation the power to make rules regulating or prohibiting the drifting of tobacco smoke from a lot in a multi-level development.

Subclause (6) substitutes clause 10 to provide that, if an owners corporation uses a common seal, the owners corporation may make rules regarding the use of the common seal.

Part 3—Amendments of other Acts

Part 3 contains clauses 83 to 89 which set out the amendments to the **Retirement Villages Act 1986** and Part 5 of the **Subdivision Act 1988**.

Division 1—Amendment of Retirement Villages Act 1986

Clause 83 subclause (1) substitutes section 36(1) of the **Retirement Villages Act 1986** to provide that residents of a retirement village may elect a residents committee to represent the interests of the residents of the village.

Subclause (2) repeals section 36(8) of the **Retirement Villages Act 1986**, which currently provides that an owners corporation has the powers of a residents committee under section 36 of the **Retirement Villages Act 1986**. This section is redundant, as it is no longer necessary to make special provision for retirement villages with owners corporations.

Division 2—Amendment of Subdivision Act 1988

Clause 84 inserts new section 27EA into the **Subdivision Act 1988**.

New section 27EA(1) requires an initial owner to engage a licensed surveyor to set out the initial allocation of lot liability and lot entitlement when preparing a plan under Part 5 of the **Subdivision Act 1988**. This requirement does not apply to a tier four owners corporation.

Clause 85 subclause (1) substitutes section 27F(1) of the **Subdivision Act 1988**, which requires a plan for the creation or merger of an owners corporation to specify details of lot entitlement and lot liability. The amendment imposes an additional requirement

for the plan to specify how the lot entitlement and lot liability is allocated in accordance with new section 27F(4).

Subclause (2) inserts new section 27F(4), which details how lot liability and lot entitlement in the plan must be allocated. Lot liability must be allocated equally between the lots unless any of the following circumstances apply—

- if there is a substantial difference in size between lots, lot liability must be allocated on the basis of the size of the lot and its proportion to the total size area of all lots; or
- if different lots have a bearing on the consumption of common utilities or the cost of maintaining the common property, lot liability must be allocated on the basis of the size of the lot and the level of use by that lot of the common utilities and common property; or
- if the number of occupiers in each lot has a greater bearing on the consumption of the common utilities or the cost of maintaining the common property than the size of the lot, lot liability must be allocated on the basis of the number of bedrooms in the lot.

Lot entitlement must be allocated on the basis of the market value of the lot, and the proportion that value bears to the total market value of the lots at the time that the plan of subdivision is registered.

Clause 86 amends section 28(2) of the **Subdivision Act 1988** to omit the reference to a common seal. The reference to a common seal is unnecessary as owners corporations are no longer required to have a common seal.

Clause 87 subclause (1) substitutes section 33(1) of the **Subdivision Act 1988**.

New section 33(1) provides that an owners corporation must apply to the Registrar to alter the lot entitlement or lot liability where there is a unanimous resolution of the members to do so.

New section 33(1A) requires an application under subsection (1) to be in the approved form and made within 60 days of the passage of the unanimous resolution.

Subclause (2) substitutes sections 33(2) and 33(3) of the **Subdivision Act 1988** for a new section 33(2), which provides that an owners corporation must act in accordance with section 27F(4) when making any alteration to the lot entitlement or lot liability.

Clause 88 amends section 34D of the **Subdivision Act 1988**, which concerns applications relating to plans of subdivision.

Subclause (1) amends section 34D(1)(a) to insert the words "or authorising" after "requiring". This is a technical amendment to clarify the operation of this paragraph.

Subclause (2) substitutes section 34D(3)(c). Section 34D(3) details factors that VCAT must be satisfied of in order to make an order on an application under section 34D(1)(b). Currently, paragraph 34D(3)(c) provides that VCAT must not make an order unless it is satisfied that the member has or members have refused consent to the proposed action and more than half the membership of the owners corporation (having more than half the total lot entitlement of the members of the owners corporation) consent to the proposed action; and the purpose of the action is likely to bring economic or social benefits to the entire subdivision greater than any economic or social disadvantage to those lot owners who did not consent.

New section 34D(3)(c) amends this requirement to provide that VCAT must not make an order unless it is satisfied that, a member or group of members which own more than half the total lot entitlement have refused consent, and all other members of the owners corporation consent to the proposed action, and the purpose for which the action is to be taken action is likely to bring economic or social benefits to the entire subdivision greater than any economic or social disadvantage to the member or group of members who did not consent. This ensures that VCAT is not prevented from hearing an application under section 34(1)(b) where a single lot owner (or group of associated lot owners) refuses consent, provided that all other lot owners consent to the action.

Clause 89 amends section 3(1) of the **Subdivision Act 1988** to substitute, in paragraph (b) of the definition of *limited owners corporation*, the word "limitations;" for "limitations". This amendment is intended to correct a punctuation error.

Part 4—Repeal

Clause 90 provides for the automatic repeal of this amending Act on 1 January 2022. The repeal of this Act does not affect in any way the continuing operation of the amendments made by this Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).