

Owners Corporations and Other Acts Amendment Bill

Exposure Draft

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Victoria

Owners Corporations and Other Acts Amendment Bill

Exposure Draft

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to amend the **Owners Corporations Act 2006**—
 - (i) to provide for 4 tiers of owners corporations that allow for the degree of regulation of owners corporations to be based on the number of occupiable lots; and

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Part 1—Preliminary

- (ii) to remove the requirement for owners corporations to have a common seal; and
- (iii) to allow owners corporations to levy fees to cover the premiums for reinstatement and replacement insurance or for any excess amount on an insurance claim; and
- (iv) to allow owners corporations to dispose of goods abandoned on the common property; and
- (v) to provide for what may be disclosed at the first meeting of an owners corporation; and
- (vi) to amend the duties of members of committees and sub-committees of owners corporations; and
- (vii) to further restrict the circumstances in which a person with a criminal record may be registered as the manager of an owners corporation; and
- (viii) to insert new duties of managers of owners corporations relating to contracts for goods or services, money held on behalf of owners corporations on trust and the obligation to disclose beneficial relationships with suppliers of goods or services; and
- (ix) to provide for owners corporations incorporated in respect of land used or to be used for the purposes of a retirement village; and

- (x) to empower VCAT to make orders—
 - (A) that authorise lot owners to commence, prosecute, defend or discontinue any proceeding on behalf of owners corporations; or
 - (B) to require lot owners to pay the reasonable costs of owners corporations; and
- (xi) to make other amendments to otherwise improve the operation of this Act; and
- (b) to amend the **Retirement Villages Act 1986** to require residents of a retirement village to elect a resident committee; and
- (c) to amend the **Subdivision Act 1988**—
 - (i) to specify how lot liability and lot entitlement must be allocated; and
 - (ii) to require an initial owner to engage a surveyor to set out the initial allocation of lot liability and lot entitlement; and
 - (iii) to make other minor and related amendments.

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 1 January 2021, it comes into operation on that day.

Part 2—Amendment of Owners Corporations Act 2006

3 Definitions

- (1) In section 3 of the **Owners Corporations Act 2006** insert the following definitions—

"occupiable lot does not include a car park, storage locker or a lot used for non-residential or commercial purposes;

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—

- (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;

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

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

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

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

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

- (2) In section 3 of the **Owners Corporations Act 2006**, the definition of *prescribed owners corporation* is repealed.

4 Functions of owners corporation

In the note at the foot of section 4 of the **Owners Corporations Act 2006** omit "and a common seal".

5 Sections 7 and 8 substituted

For sections 7 and 8 of the **Owners Corporations Act 2006** substitute—

"7 The four tiers of owners corporations

- (1) For the purposes of this Act, an owners corporation falls within one of 4 tiers as specified in this section.
 - (2) A tier one owners corporation is an owners corporation that consists of 51 or more occupiable lots and is not a services only owners corporation.
 - (3) A tier two owners corporation is an owners corporation that consists of 10 to 50 occupiable lots and is not a services only owners corporation.
 - (4) A tier three owners corporation is an owners corporation that consists of 3 to 9 occupiable lots and is not a services only owners corporation.
 - (5) A tier four owners corporation is—
 - (a) an owners corporation for a 2-lot subdivision; or
 - (b) a services only owners corporation.
 - (6) 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 (5) as if a reference in those subsections to an occupiable lot were a reference to a non-occupiable lot.
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**7A Owners corporation for 2-lot subdivision
(tier four owners corporations)**

- (1) An owners corporation for a 2-lot subdivision is exempt from compliance with—
 - (a) sections 18, 31, 32, 59, 60, 61, 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 four owners corporations)**

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, 129, 133 and 135;
 - (ii) Division 8 of Part 4;
 - (iii) Division 3 of Part 9."

6 Section 10 substituted

For section 10 of the **Owners Corporations Act 2006 substitute—**

"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."

7 New section 17A inserted

After section 17 of the **Owners Corporations Act 2006 insert—**

"17A Water on common property

- (1) Any water that falls, is located or flows on the common property is taken to be the property of the owners corporation.

- (2) An owners corporation may acquire or dispose of any water rights under the **Water Act 1989**".

8 Heading to Division 4 of Part 2 amended

In the heading to Division 4 of Part 2 of the **Owners Corporations Act 2006**, for "**bring legal proceedings**" substitute "**commence legal proceeding**".

9 Section 18 substituted

For section 18 of the **Owners Corporations Act 2006** substitute—

"18 Power to commence legal proceeding

- (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) the VCAT or any other tribunal; or
 - (c) a court of another State or a Territory that corresponds to the Magistrates' Court."

10 New section 18A inserted

After the heading to Division 5 of Part 2 of the **Owners Corporations Act 2006** insert—

"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."

11 Section 23 amended

- (1) In the heading to section 23 of the **Owners Corporations Act 2006**, before "fees" insert "annual".

- (2) For section 23(3) and (3A) of the **Owners Corporations Act 2006** substitute—

"(3) Subject to subsection (3A), the 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.
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- (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."

12 New section 23A inserted

After section 23 of the **Owners Corporations Act 2006** insert—

"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 set 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 payable on 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) an invitee of a lot owner or an invitee 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)."

13 Section 24 amended

- (1) In the heading to section 24 of the **Owners Corporations Act 2006**, after "fees" insert "and charges".
- (2) In section 24(2) of the **Owners Corporations Act 2006**, after "fees" insert "and charges".
- (3) In section 24(2A) of the **Owners Corporations Act 2006**—
 - (a) after "Fees" insert "and charges";
 - (b) for "undertaken" substitute "carried out".
- (4) After section 24(2A) of the **Owners Corporations Act 2006** insert—

"(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."

14 Liability of lot owners

- (1) In section 28(2) of the **Owners Corporations Act 2006**, for "A lot owner" substitute "Subject to sections 24, 49 and 53, a lot owner".
 - (2) Section 28(3) of the **Owners Corporations Act 2006** is repealed.
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15 Final notice

In section 32(1) of the **Owners Corporations Act 2006**, for "send" substitute "give".

16 Section 34 substituted

For section 34 of the **Owners Corporations Act 2006** substitute—

"34 Financial statements

- (1) An owners corporation that is a tier one owners corporation or a tier two owners corporation must prepare annual financial statements for presentation at the general meeting of the owners corporation in accordance with the Australian Accounting Standards.
- (2) A tier three 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**".

17 Section 35 substituted

For section 35 of the **Owners Corporations Act 2006** substitute—

"35 Audit of financial statements of owners corporations

- (1) A tier one owners corporation with more than 100 lots 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 one owners corporation with between 51 and 100 lots 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 one owners corporation with between 51 and 100 lots, 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 two 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.
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- (5) 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.
- (6) A tier four 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.
- (7) A person who audits the financial statements of an owners corporation must provide the owners corporation with a written report of the audit.
- (8) 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.
- (9) 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.

35A Exemption from requirement to audit financial statements

- (1) A tier one owners corporation with more than 100 lots may apply in writing to the Director for an exemption from the requirement to audit its financial statements under section 35(1).
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- (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)."

18 Section 36 substituted

For section 36 of the **Owners Corporations Act 2006 substitute—**

"36 Maintenance plan

- (1) An owners corporation that is a tier one owners corporation must prepare and approve a maintenance plan for the property for which it is responsible.
- (2) An owners corporation that is 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."

19 What must a maintenance plan contain?

After section 37(1) of the **Owners Corporations Act 2006 insert—**

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

20 Section 41 repealed

Section 41 of the **Owners Corporations Act 2006 is repealed.**

21 Payments into maintenance fund

- (1) In section 42 of the **Owners Corporations Act 2006**, for "maintenance plan" (where twice occurring) **substitute** "approved maintenance plan".
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(2) At the end of section 42 of the **Owners Corporations Act 2006** insert—

"(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.

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

22 Extraordinary payments from maintenance fund

In section 44 of the **Owners Corporations Act 2006**, after "maintenance fund" insert "other than in accordance with the approved maintenance plan".

23 Extraordinary payments for urgent matters

In section 45(2)(c) of the **Owners Corporations Act 2006**, for "maintenance plan" substitute "approved maintenance plan".

24 New section 47A inserted

After section 47 of the **Owners Corporations Act 2006** insert—

"47A Lot owners must not repair and maintain common property or services

(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."

25 Cost of repairs, maintenance or other works

In section 49(1) of the **Owners Corporations Act 2006**, for "undertaken" substitute "carried out".

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

At the end of section 50 of the **Owners Corporations Act 2006** insert—

"(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."

27 What notice of entry must be given?

After section 51(2) of the **Owners Corporations Act 2006** insert—

"(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 authorised by the owners corporation under section 50."

28 New Division 5A of Part 3 inserted

After section 53 of the **Owners Corporations Act 2006** insert—

"Division 5A—Disposal of goods abandoned on common property

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

- (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.

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
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- (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

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.
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53D Disposal of goods

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

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

29 Reinstatement and replacement insurance

In section 59(1) of the **Owners Corporations Act 2006**, after "owners corporation" **insert** "that is a tier one owners corporation or a tier two owners corporation".

30 Public liability insurance

In section 60(3) of the **Owners Corporations Act 2006**, for "\$10 000 000" **substitute** "\$20 000 000".

31 Insurance for lots in multi-level developments

After section 61(2) of the **Owners Corporations Act 2006 insert—**

- "(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.

- (4) 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."

32 Valuation of buildings

For section 65(1) of the **Owners Corporations Act 2006 substitute**—

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

Note

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

- (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."

33 What documents must be provided at the first meeting?

(1) For section 67(d) of the **Owners Corporations Act 2006 substitute**—

"(d) a maintenance plan;"

(2) For section 67(j) of the **Owners Corporations Act 2006 substitute**—

"(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."

(3) At the end of section 67 of the **Owners Corporations Act 2006 insert**—

"(2) For the purposes of section 67(1)(l), a warranty must be assigned to the owners corporation if the warranty holder is the sole beneficiary of the terms of the warranty."

34 New sections 67A to 67C inserted

After section 67 of the **Owners Corporations Act 2006 insert**—

"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

- (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.
- (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

- (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."

35 Obligations of initial owner

- (1) In section 68(3) of the **Owners Corporations Act 2006**—
 - (a) for "the majority of the lots" **substitute** "a lot to which is, or the lots to which are, attached the majority of the lot entitlements of the lots";
 - (b) for "5 years" **substitute** "10 years".
 - (2) After section 68(4) of the **Owners Corporations Act 2006 insert**—

"(4A) The initial owner of land affected by an owners corporation or an associate of an initial owner must not—

 - (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—
- (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."

(3) For section 68(5) of the **Owners Corporations Act 2006 substitute—**

"(5) In this section—

associate, of an initial owner, means—

- (a) an employee or agent of the initial owner; or
- (b) a spouse, domestic partner, parent, brother, sister or child of the initial owner or the initial owner's representative; or
- (c) 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."

36 Quorum for a general meeting

In section 77 of the **Owners Corporations Act 2006**, for "total votes" (where twice occurring) **substitute** "total number of occupiable lots".

37 Can a general meeting proceed even without a quorum?

After section 78(1) of the **Owners Corporations Act 2006** insert—

- "(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.
- (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 per cent 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 per cent of the annual budget of the owners corporation for the previous year.
- (1C) An owners corporation, by ordinary resolution, may exclude or alter the power of the manager to make an interim resolution under subsection (1A)."

38 Notice of ballot

- (1) In the note at the foot of section 85(1) of the **Owners Corporations Act 2006**, for "will permit" **substitute** "enables".
- (2) For section 85(2)(a) of the **Owners Corporations Act 2006** **substitute**—
- "(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".

39 Resolution by ballot

- (1) Section 86(1) of the **Owners Corporations Act 2006** is **repealed**.
- (2) At the foot of section 86(2) of the **Owners Corporations Act 2006** insert—

"Note

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

40 Division 6 of Part 4 substituted

For Division 6 of Part 4 of the **Owners Corporations Act 2006** substitute—

"Division 6—Voting

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.

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.

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.

89A Does the chairperson have a casting vote?

- (1) The chairperson 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?

- (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

- (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.
 - (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

- (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 percent of the lot owners—if there are more than 20 occupiable lots on the plan of subdivision.
- (2) Subsection (1) 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.

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.

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 percent 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

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

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."

41 Sections 91, 92, 93 and 94 repealed

Sections 91, 92, 93 and 94 of the **Owners Corporations Act 2006** are repealed.

42 Interim special resolutions

After section 97(1) of the **Owners Corporations Act 2006** insert—

"(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—

- (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."

43 Election of committee

In section 100 of the **Owners Corporations Act 2006**—

- (a) for "13 or more lots" **substitute** "10 or more lots";
- (b) for "13 lots" **substitute** "10 lots".

44 Membership of committees

(1) In section 103(1) of the **Owners Corporations Act 2006**, for "12 members" **substitute** "7 members".

(2) After section 103(1) of the **Owners Corporations Act 2006** insert—

"(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."

- (3) In section 103(7)(b) of the **Owners Corporations Act 2006**, for "the lot owner is" substitute "the lot owner or the proxy for the lot owner is".

45 Ballots

For section 111(2) and (3) of the **Owners Corporations Act 2006** substitute—

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

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."

46 Resolutions of committee to be resolutions of owners corporation

In section 113 of the **Owners Corporations Act 2006**, after "any matter" insert "within its functions and powers".

47 Section 117 substituted

For section 117 of the **Owners Corporations Act 2006 substitute—**

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

48 Appointment and removal of manager

For section 119(1) of the **Owners Corporations Act 2006 substitute—**

- "(1) An owners corporation that is a tier one owners corporation with more than 100 lots must appoint a person to be the manager of the owners corporation.
- (1A) Despite subsection (1), an owners corporation that is a tier one owners corporation with more than 100 lots, by special resolution, may opt out of the requirement under subsection (1) to appoint a person to be the manager of the owners corporation.

- (1B) A decision referred to in subsection (1A) may be reversed and a person appointed to be the manager of the owners corporation by ordinary resolution at a date later than the date of the special resolution.
- (1C) An owners corporation that is 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.
- (1D) A person must not be appointed as the manager of an owners corporation for a period that exceeds 3 years."

49 New section 119A inserted

After section 119 of the **Owners Corporations Act 2006** insert—

"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 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, in accordance with the terms of the contract, of its intention not to renew the manager's contract;
 - (e) 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)(e), 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."

50 Duties of manager

- (1) In section 122(1) of the **Owners Corporations Act 2006**—

(a) in paragraph (c), for "person." **substitute** "person; and";

(b) after paragraph (c) **insert**—

"(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

(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

(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."

(2) In section 122(2) of the **Owners Corporations Act 2006**—

(a) for paragraph (b) **substitute**—

"(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";

(b) after paragraph (b) **insert**—

"(c) subject to subsection (3), must hold all money held on behalf of separate owners corporations on trust in separate bank accounts; and

(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—

(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."

(3) After section 122(2) of the **Owners Corporations Act 2006** **insert**—

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

51 New sections 122A and 122B inserted

After section 122 of the **Owners Corporations Act 2006** insert—

"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 a person, means—

 - (a) an employee of the person; or
 - (b) a spouse, domestic partner, parent, brother, sister 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, 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

- (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)."

52 Report

- (1) In section 126(1) of the **Owners Corporations Act 2006**, for "the manager's activities" **substitute** "all money held on behalf of the owners corporation by the manager on trust and any disbursement of that money".
- (2) For section 126(2) of the **Owners Corporations Act 2006 substitute**—
 - "(2) The report must include—
 - (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) After section 126(2) of the **Owners Corporations Act 2006 insert—**

"(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."

53 Address of absent owners

For the note at the foot of section 135 of the **Owners Corporations Act 2006 substitute—**

"Note

See section 148."

54 Power to make rules regarding proxies

In section 138A of the **Owners Corporations Act 2006**, for "section 87" **substitute** "section 89C".

55 New section 138B inserted

After section 138A of the **Owners Corporations Act 2006 insert—**

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

- (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."

56 Rules to be of no effect if inconsistent with law

For section 140(a) of the **Owners Corporations Act 2006** substitute—

- "(a) is oppressive to, unfairly prejudicial to or unfairly discriminates against, a lot owner or an occupier of a lot; or"

57 New section 141A inserted

After section 141 of the **Owners Corporations Act 2006 insert—**

"141A Occupier to ensure invitees comply with rules

- (1) An occupier of a lot (including a lot owner or a lessee of a lot) must ensure that any invitee to the lot complies with the rules of the owners corporation.
- (2) If an invitee to a lot breaches the rules of the owners corporation, the occupier of the lot and the invitee are jointly and severally liable for satisfying any penalty or compensation payable as a consequence of the invitee's breach.
- (3) Despite subsection (2), an occupier of a lot is not taken to be liable for an invitee's breach if the occupier of the lot provides the invitee with a copy of the rules of the owners corporation."

58 New Part 8A inserted

After section 143 of the **Owners Corporations Act 2006 insert—**

"Part 8A—Retirement Villages

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 section.

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 fees under section 23; or
 - (b) a special resolution levying extraordinary fees 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.

143D Contract entered into by applicant for registration prior to first meeting

Section 67B(2) 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.

143E 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.

143F 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 that exceeds 3 years.

143G Contract of appointment of manager

Despite section 119A(1), an owners corporation under this Part may include any of the terms referred to in section 119A(1) in a contract of appointment of the manager of the owners corporation.

143H 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.
- (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."

59 Availability of records

In section 146(2) of the **Owners Corporations Act 2006**, for "may" **substitute** "must".

60 Availability of register

After section 150(2) of the **Owners Corporations Act 2006** **insert**—

- "(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."

61 Owners corporation certificate

In section 151(4) of the **Owners Corporations Act 2006**—

- (a) in paragraph (b)(v), for "register; and" **substitute** "register.";
 - (b) paragraph (c) is **repealed**.
-

62 Complaints

In section 152(4) of the **Owners Corporations Act 2006**, after "injury" **insert** "or the recovery of any fees, charges, contribution or amount owing to an owners corporation under section 28".

63 Decision whether to take action in respect of alleged breach

(1) After section 153(1) of the **Owners Corporations Act 2006 insert—**

"(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) In section 153(2)(b) of the **Owners Corporations Act 2006**, for "the breach" **substitute** "the alleged breach".

(3) In section 153(3) of the **Owners Corporations Act 2006**, for "an alleged breach" **substitute** "a complaint made under section 152".

64 How may notice be given?

At the foot of section 158 of the **Owners Corporations Act 2006 insert—**

"Note

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

65 VCAT may hear and determine disputes

In section 162 of the **Owners Corporations Act 2006**—

- (a) in paragraph (c), for "owners corporation." **substitute** "owners corporation; or";
- (b) after paragraph (c) **insert**—
 - "(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."

66 VCAT may dismiss application

In section 164 of the **Owners Corporations Act 2006**, for "a breach" **substitute** "an alleged breach".

67 What orders can VCAT make?

(1) In section 165(1) of the **Owners Corporations Act 2006**—

- (a) paragraph (ba) is **repealed**;
 - (b) after paragraph (c) **insert**—
 - "(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);";
 - (c) in paragraph (m), for "Register." **substitute** "Register;";
-

(d) after paragraph (m) **insert**—

"(n) an order requiring an occupier of a lot to grant entry to a lot or a building on a lot to a person authorised by an owners corporation for the purposes of section 50."

(2) After section 165(3) of the **Owners Corporations Act 2006 insert**—

"(4) This section does not affect VCAT's power to award costs under section 109 of the **Victorian Civil and Administrative Tribunal Act 1998**."

68 Penalty for breach of rules

(1) In section 166 of the **Owners Corporations Act 2006**, for "\$250" **substitute** "\$1100 to be paid to the owners corporation".

(2) The note at the foot of section 166 of the **Owners Corporations Act 2006** is **repealed**.

69 What must VCAT consider?

At the end of section 167 of the **Owners Corporations Act 2006 insert**—

"(2) For the purposes of an order under section 162(1)(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 those Parts to a consumer contract were a reference to the contract of appointment of the manager."

70 New Division 1B of Part 11 inserted

After section 169H of the **Owners Corporations Act 2006** insert—

"Division 1B—Proceedings commenced, prosecuted, defended or discontinued by lot owner on behalf of owners corporation

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

- (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

- (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."

71 Eligibility for registration

- (1) In section 179(c) of the **Owners Corporations Act 2006**, for "corporate." substitute "corporate; or".

(2) After section 179(c) of the **Owners Corporations Act 2006** insert—

- "(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
 - (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 subparagraphs (i), (ii), (iii) and (iv).

Note

Despite paragraph (d), a person to whom that 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."

72 New section 182A inserted

After section 182 of the **Owners Corporations Act 2006 insert—**

"182A Permission to be registered as manager despite criminal record

- (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.
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- (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."

73 New section 185A inserted

After section 185 of the **Owners Corporations Act 2006 insert—**

"185A Professional indemnity insurance

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

74 Automatic cancellation of registration

At the end of section 186 of the **Owners Corporations Act 2006 insert—**

- "(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 paragraphs (a), (b), (c) and (d).
- (3) For the purposes of subsection (2), the conviction or finding of guilt of the person takes effect on the later of—
- (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
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- (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.
- (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."

75 New sections 186A and 186B inserted

After section 186 of the **Owners Corporations Act 2006** insert—

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

- (1) A person to whom section 186(2) applies may, within the 30-day period referred to in that section, 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.
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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."

76 Section 199 repealed

Section 199 of the **Owners Corporations Act 2006** is **repealed**.

77 New section 199 inserted

Before section 200 in Part 13 of the **Owners Corporations Act 2006** insert—

"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 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))."

78 New section 200A inserted

After section 200 of the **Owners Corporations Act 2006** insert—

"200A Manner in which documents may be given to or served on owners corporation

- (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."

79 Money to be paid to Victorian Property Fund

For section 201(b) of the **Owners Corporations Act 2006** substitute—

- "(b) all penalties (other than a civil penalty under section 166) payable under this Act."

80 Section 203 amended

- (1) In the heading to section 203 of the **Owners Corporations Act 2006**, for "**bring proceedings**" substitute "**commence a proceeding**".
- (2) In section 203 of the **Owners Corporations Act 2006**—
 - (a) in subsection (1), for "brought" substitute "commenced";
 - (b) in subsection (2)—
 - (i) for "In proceedings" substitute "In any proceeding";
 - (ii) for "bringing the proceedings" substitute "commencing the proceeding";
 - (iii) for "bring the proceedings" substitute "commence the proceeding".

81 New Part 14 inserted

After section 205 of the **Owners Corporations Act 2006** insert—

**"Part 14—Transitional and
savings provisions—Owners
Corporations and Other Acts
Amendment Act 2019**

206 Definitions

In this Part—

commencement day means the day on which the 2019 Act comes into operation;

2019 Act means the **Owners Corporations and Other Acts Amendment Act 2019**.

207 Requirement to have maintenance plan

Section 36(1) as substituted by the 2019 Act does not apply to—

- (a) a tier one owners corporation with more than 100 lots until 12 months after the commencement day; or
- (b) a tier one owners corporation with between 51 and 100 lots until 24 months after the commencement day.

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.
- (2) Subject to section 143G, if a contract of appointment includes any of the terms referred to in section 119A(1) as inserted by the 2019 Act, that term is void on and after the commencement day.

209 Financial statements

- (1) Section 34 as substituted by the 2019 Act and sections 35 and 35A as substituted and inserted by the 2019 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.

210 Review of amendments made by 2019 Act

- (1) The Minister must cause a review of the operation of the amendments made to this Act by the 2019 Act to be undertaken.
- (2) The review must commence at least 2 years after the commencement of the 2019 Act and no later than 5 years after that commencement.
- (3) The review must review the operation of the amendments made to this Act by the 2019 Act in accordance with the terms of reference determined by the Minister, including how the 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 January 2027."

82 Amendment of Schedule 1

- (1) After clause 1.4 of Schedule 1 to the **Owners Corporations Act 2006 insert—**
 - "1.5 Requiring advice to be given to occupiers about fire safety procedures and the operation of fire alarm systems."
 - (2) After clause 3.4 of Schedule 1 to the **Owners Corporations Act 2006 insert—**
 - "3.5 Payment of fees by instalments by lot owners in financial difficulty."
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Part 2—Amendment of Owners Corporations Act 2006

- (3) In clause 4.1 of Schedule 1 to the **Owners Corporations Act 2006**, after "Use of" **insert** "and access to".
- (4) In clause 4.2 of Schedule 1 to the **Owners Corporations Act 2006**, after "Use of" **insert** "and access to".
- (5) After clause 7.2 of Schedule 1 to the **Owners Corporations Act 2006 insert—**
"7.3 Regulating or prohibiting the drifting of tobacco smoke from a lot in a multi-level development.".
- (6) For clause 10 of Schedule 1 to the **Owners Corporations Act 2006 substitute—**
"10 Common seal
If the owners corporation uses a common seal, the use of the common seal.".

Part 3—Amendment of other Acts

Division 1—Amendment of Retirement Villages Act 1986

83 Residents committee

- (1) For section 36(1) of the **Retirement Villages Act 1986** substitute—

"(1) The residents of a retirement village may elect a residents committee to represent the interests of the residents of the village."

- (2) Section 36(8) of the **Retirement Villages Act 1986** is repealed.

Division 2—Amendment of Subdivision Act 1988

84 New section 27EA inserted

After section 27E of the **Subdivision Act 1988** insert—

"27EA Initial owner to engage surveyor

- (1) For the purposes of preparing a plan under this Part, an initial owner must engage a licensed surveyor to set out the initial allocation of lot liability and lot entitlement in the plan.
- (2) Subsection (1) does not apply to a tier four owners corporation within the meaning of section 7(5)(a) of the **Owners Corporations Act 2006**."

85 Plan must specify lot entitlement and lot liability

- (1) For section 27F(1) of the **Subdivision Act 1988** substitute—

"(1) A plan providing for the creation of an owners corporation or for the merger of owners corporations must specify—

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Part 3—Amendment of other Acts

- (a) details of lot entitlement and lot liability; and
 - (b) how the lot entitlement and lot liability is allocated in accordance with subsection (4)."
- (2) After section 27F(3) of the **Subdivision Act 1988** insert—
- "(4) For the purposes of this section—
- (a) lot liability in the plan must be allocated equally between the lots unless the following applies—
 - (i) if there is a substantial difference in size between the lots—lot liability must be allocated on the basis of the size of the lot and the proportion that size bears to the total size area of the lots;
 - (ii) 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 level of use by that lot of the common utilities and the common property;
 - (iii) 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 is to be allocated on the basis of the number of bedrooms in the lot; and
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- (b) lot entitlement in the plan 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 is registered."

86 Creation of owners corporation

In section 28(2) of the **Subdivision Act 1988** omit "and a common seal".

87 How can lot entitlement and liability be altered?

- (1) For section 33(1) of the **Subdivision Act 1988** substitute—

"(1) If there is a unanimous resolution of the members, the owners corporation must apply to the Registrar to alter the lot entitlement or lot liability.

- (1A) An application under subsection (1) must be made—

- (a) in the approved form; and

- (b) within 60 days of the passage of the unanimous resolution."

- (2) For section 33(2) and (3) of the **Subdivision Act 1988** substitute—

"(2) In making any alteration to the lot entitlement or lot liability, the owners corporation must act in accordance with section 27F(4)."

88 Applications relating to plans

- (1) In section 34D(1)(a) of the **Subdivision Act 1988**, after "requiring" insert "or authorising".
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(2) For section 34D(3)(c) of the **Subdivision Act 1988** substitute—

- "(c) the member has or the group of members have refused consent to the proposed action and—
- (i) the member owns or the group of members own more than half of the total lot entitlement; and
 - (ii) all other members of the owners corporation consent to the proposed action; and
 - (iii) the purpose for which the action is to be taken is likely to bring economic or social benefits to the subdivision as a whole greater than any economic or social disadvantages to the member or the group of members who did not consent to the action."

89 Statute law revision

In section 3(1) of the **Subdivision Act 1988**, in paragraph (b) of the definition of *limited owners corporation*, for "limitations" substitute "limitations;".

Part 4—Repeal

90 Repeal of amending Act

This Act is **repealed** on 1 January 2022.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.