Version No. 076

**Subdivision Act 1988**

**No. 53 of 1988**

Version incorporating amendments as at  
2 July 2018

**table of provisions**

*Section Page*

Part 5—Subdivisions with owners corporations 1

Division 1—Creation of owners corporation 1

27 How is an owners corporation created? 1

27A If there is common property an owners corporation must be created 2

27B Purposes of an unlimited owners corporation 2

27C Limited owners corporations 2

27D Restriction on creation of owners corporations 3

27E Creation of rules 3

27EA Initial owner to engage surveyor 4

27F Plan must specify lot entitlement and lot liability 4

27G Plan may specify limitations 6

27H Registrar to record information 6

28 Creation of owners corporation 7

29 Owners corporation excluded from Corporations legislation 7

Division 2—Common property 8

30 Vesting of common property 8

31 Registrar must create folio of Register for common property 9

31A Dealings in common property 9

Division 3—Alteration of a subdivision 10

32 Powers to alter subdivision 10

32AA Powers do not apply to certain changes relating to common property 12

32AB No power to compulsorily acquire 12

32AC Creation of roads and reserves 12

32AD Registration of plan 12

32AE Lot liability and lot entitlement 13

32AF Land to which powers may apply 13

32AG Dissolution of owners corporation 14

32AH Merger of owners corporations 14

32AI Consolidation, subdivision or alteration 15

32AJ Restriction on alteration to plan 17

32AK Identity of owners corporation not affected by alteration of plan 17

32AL Registration of plan of consolidation 17

Division 4—General provisions relating to plans 18

32A Total consolidation or re-subdivision 18

32B New plan may create owners corporation 19

33 How can lot entitlement and liability be altered? 20

34 Recording of changes to a plan 20

Division 5—Disputes and other proceedings relating to owners corporations 21

34A Disputes relating to owners corporations—general 21

34B Disputes about easements 21

34C VCAT may refer matter to County Court 22

34D Applications relating to plans 22

34E Application for order requiring owners corporation to comply 25

34F Order to Registrar 25

Division 6—Winding up of owners corporation 25

34G Winding up of an owners corporation 25

34H Cancellation or amendment of plan on winding up 26

**Version No.** **076**

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Pt 5 (Heading and ss 27–34) amended by Nos 47/1989 ss 5(4)(j),   
9(a)–(p), 10, 19(q), 92/1989 ss 4, 5, 7(c)(d), 48/1991 ss 25–29, 30(1)(2)(b), 57/1993 s. 13, 17(2), 44/2001 s. 3(Sch. item 106), substituted as Pt 5   
(Headings and ss 27–34H) by No. 69/2006 s. 211.

Part 5—Subdivisions with owners corporations

Division 1—Creation of owners corporation

S. 27 substituted by No. 69/2006 s. 211.

27 How is an owners corporation created?

(1) A plan may provide for the creation of one or more owners corporations consisting of the owners of specified lots.

(2) An owners corporation may be—

(a) an unlimited owners corporation; or

(b) a limited owners corporation.

(3) The plan must specify whether an owners corporation is an unlimited owners corporation or a limited owners corporation.

(4) The plan must specify the lots and common property to be affected by the owners corporation.

S. 27A inserted by No. 69/2006 s. 211.

27A If there is common property an owners corporation must be created

A plan which contains common property must provide for the creation of one or more owners corporations.

S. 27B inserted by No. 69/2006 s. 211, substituted by No. 42/2017 s. 58.

27B Purposes of an unlimited owners corporation

The purposes of an unlimited owners corporation must be provided to the Registrar in a manner acceptable to the Registrar.

S. 27C (Heading) substituted by No. 42/2017 s. 59(1).

S. 27C inserted by No. 69/2006 s. 211.

27C Limited owners corporations

S. 27C(1) repealed by No. 42/2017 s. 59(2).

\* \* \* \* \*

S. 27C(2) substituted by No. 42/2017 s. 59(3).

(2) The purposes of a limited owners corporation must be provided to the Registrar in a manner acceptable to the Registrar.

(3) Only the members of a limited owners corporation affecting a lot are entitled to use any common property affected by that limited owners corporation.

(4) The plan may be accompanied by a document specifying the functions or obligations of the limited owners corporation under the **Owners Corporations Act 2006** that are to be carried out or complied with by the unlimited owners corporation affecting the land affected by the limited owners corporation.

(5) If a document accompanying a plan specifies functions or obligations as provided for in subsection (4), then, despite anything to the contrary in the **Owners Corporations Act 2006**, on the registration of the plan—

(a)the unlimited owners corporation must carry out those functions or comply with those obligations instead of the limited owners corporation; and

(b) the limited owners corporation is not required to carry out those functions or comply with those obligations.

**Example**

A document accompanying a plan may specify that the unlimited owners corporation is to issue owners corporation certificates instead of the limited owners corporation.

S. 27D inserted by No. 69/2006 s. 211.

27D Restriction on creation of owners corporations

(1) A lot must not be affected by more than one unlimited owners corporation.

(2) A lot must not be affected by more than one owners corporation unless—

(a) one of the owners corporations is an unlimited owners corporation; and

(b) all the other owners corporations affecting the lot are limited owners corporations.

S. 27E inserted by No. 69/2006 s. 211.

27E Creation of rules

S. 27E(1) amended by No. 6/2008 s. 37(1).

(1) A plan providing for the creation of an owners corporation or for the merger of owners corporations may be accompanied by a document specifying proposed rules for the owners corporation.

S. 27F(2) substituted by No. 42/2017 s. 60.

(2) On the registration of the plan, the rules must be taken to be rules made by the owners corporation under the **Owners Corporations Act 2006** and may be revoked or amended accordingly.

**Note**

Part 8 of the **Owners Corporations Act 2006** provides for the powers to make rules of an owners corporation.

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**.

27F Plan must specify lot entitlement and lot liability

~~(1) A plan providing for the creation of an owners corporation or for the merger of owners corporations must specify details of lot entitlement and lot liability.~~

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

(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) The basis for the allocation of lot entitlement and lot liability and any other prescribed information must be provided to the Registrar in a manner acceptable to the Registrar.

(3) The prescribed information that a document must contain under subsection (2) is not limited to information about the owners corporation or lot entitlement or lot liability.

(4) For the purposes of this section —

(a) 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 having 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

(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.

S. 27G inserted by No. 69/2006 s. 211.

27G Plan may specify limitations

A plan providing for the creation of an owners corporation may specify that the owners corporation is limited to the common property.

**Note**

The **Owners Corporations Act 2006** provides that certain provisions of that Act do not apply to an owners corporation that is specified to be limited to the common property.

S. 27H inserted by No. 69/2006 s. 211, amended by No. 6/2008 s. 37(2) (ILA s. 39B(1)).

27H Registrar to record information

(1) The Registrar must, as prescribed, record information contained in or provided with a plan and must amend that information in the prescribed manner and in the prescribed circumstances.

S. 27H(2) inserted by No. 6/2008 s. 37(2).

(2) Without limiting subsection (1), if there is a special resolution of the members, an owners corporation may apply to the Registrar to alter the purposes of the owners corporation.

S. 27H(3) inserted by No. 6/2008 s. 37(2).

(3) Without limiting subsection (1), if there is a special resolution of the members of an unlimited owners corporation and a special resolution of the members of a limited owners corporation, the owners corporations may apply to the Registrar to alter the functions or obligations of the limited owners corporation that are to be carried out or complied with by the unlimited owners corporation.

**Note**

See section 27C.

S. 27H(4) inserted by No. 6/2008 s. 37(2).

(4) On the Registrar altering the purposes of the owners corporation, the altered purposes become the purposes of the owners corporation.

S. 27H(5) inserted by No. 6/2008 s. 37(2).

(5) On the Registrar altering the functions or obligations of the limited owners corporation that are to be carried out or complied with by the unlimited owners corporation, section 27C(5) applies as if the alteration were the registration of the plan and that subsection referred to the functions or obligations as so altered.

S. 28  
substituted by No. 69/2006 s. 211.

28 Creation of owners corporation

(1) In addition to section 24, when a plan providing for the creation of one or more owners corporations or containing common property is registered—

(a) each owners corporation for which the plan provides is incorporated; and

(b) the owners of the specified lots become the first members of the owners corporation; and

(c) the owners for the time being of the lots are the members of the owners corporation.

(2) An owners corporation has perpetual succession ~~and a common seal~~ and is capable of suing and being sued in its own name.

**Note**

An owners corporation has the powers and functions set out in Division 1 of Part 2 of the **Owners Corporations Act 2006**.

S. 29  
substituted by No. 69/2006 s. 211.

29 Owners corporation excluded from Corporations legislation

An owners corporation is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation, otherwise than to the extent that the owners corporation carries out activities that are not authorised by or under this Act or the **Owners Corporations Act 2006**.

**Note**

This section ensures that neither the Corporations Act nor Part 3 of the ASIC Act will apply in relation to an owners corporation in relation to its performance of functions or exercise of powers under this Act or the **Owners Corporations Act 2006**. Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in relation to that matter in the State concerned.

Division 2—Common property

S. 30  
substituted by No. 69/2006 s. 211.

30 Vesting of common property

(1) In addition to section 24, when a plan containing common property is registered—

(a) any common property affected by an unlimited owners corporation vests in the owners for the time being of the lots affected by the unlimited owners corporation as tenants in common in shares proportional to their lot entitlement; and

(b) subject to paragraph (c), any common property affected by a limited owners corporation vests in the owners for the time being of the lots affected by the relevant unlimited owners corporation as tenants in common in shares proportional to their lot entitlement; and

(c) any common property affected by a limited owners corporation vests in the owners for the time being of the lots affected by the limited owners corporation, if there is no unlimited owners corporation affecting those lots.

(2) In subsection (1), ***relevant unlimited owners corporation*** means the unlimited owners corporation affecting the lots affected by the limited owners corporation.

S. 31  
substituted by No. 69/2006 s. 211.

31 Registrar must create folio of Register for common property

(1) The Registrar must create folios of the Register for any common property in the name of the relevant owners corporation as nominee for the owners of the common property but must not produce a certificate of title for those folios.

(2) The Registrar may require submission of and cancel any existing certificate of title for common property.

S. 31A  
inserted by No. 69/2006 s. 211.

31A Dealings in common property

(1) The share in the common property of a member of an owners corporation cannot be dealt with except—

(a) as part of a dealing with the member's lot; or

(b) under Division 3 or section 32A; or

(c) by the owners corporation, in accordance with the regulations.

(2) A dealing, encumbrance or notification affecting a lot operates as a dealing, encumbrance or notification affecting the lot owner's share in the common property, even though that share is not mentioned in any document giving effect to the dealing, encumbrance or notification affecting the lot.

S. 31A(3) amended by No. 80/2009 s. 99(1).

(3) The Registrar may only record on the folio of the Register for common property anything affecting the common property and not a lot owner's share in the common property.

S. 31A(4) amended by No. 80/2009 s. 99(2).

(4) A recording made on the folio of the Register for a lot operates in relation to the owner's share in the common property as if it were also a recording made in relation to that share on the folio for the common property.

Division 3—Alteration of a subdivision

S. 32  
substituted by No. 69/2006 s. 211.

32 Powers to alter subdivision

If there is a unanimous resolution of the members, an owners corporation may proceed under this Division to do one or more of the following—

(a) dispose of the fee simple in—

(i) all or part of any common property vested in it; or

(ii) any other land purchased or obtained by it;

(b) purchase or otherwise obtain land—

(i) for inclusion in or to become common property; or

(ii) which is or is to become a lot;

S. 32(c) substituted by No. 80/2009 s. 100.

(c) alter the boundaries of any land affected by the owners corporation, whether or not the alteration results in an increase or decrease of the area of land affected by the owners corporation;

(d) increase or reduce the number of lots affected by the owners corporation;

(e) create new lots or new common property;

(f) create and name an owners corporation and specify the land to be land affected by that new owners corporation and specify lot entitlement and lot liability in relation to that owners corporation;

(g) dissolve itself if—

(i) it is an owners corporation without common property vested in itand it owns no land; or

(ii) it disposes under this section of all its common property and all the land that it owns;

(h) merge with another owners corporation (created on the same or another plan) if—

(i) none of the land affected by the first owners corporation is land affected by the other owners corporation and the merger would not result in the same land being land affected by 2 or more unlimited owners corporations; or

(ii) one of the merging owners corporations is an unlimited owners corporation and the land affected by that owners corporation includes all the land affected by all other merging limited owners corporations;

(i) create, vary or remove any easement or restriction (including an implied easement);

(j) consolidate into a single lot all the land affected by the owners corporation if—

(i) it is an unlimited owners corporation and, if any land affected by it is also affected by a limited owners corporation, the members of that limited owners corporation by unanimous resolution consent to the consolidation; or

(ii) none of the land affected by the owners corporation is land affected by another owners corporation;

(k) create, alter or extinguish lot entitlement or lot liability in any way necessary because of the exercise of its other powers under this section;

(l) amend or cancel a scheme of development under the **Cluster Titles Act 1974** in any way necessary because of the exercise of its other powers under this section;

(m) create roads or reserves.

S. 32AA  
inserted by No. 69/2006 s. 211.

32AA Powers do not apply to certain changes relating to common property

Section 32 does not apply to a change in the ownership of the common property that occurs because of a change in the ownership of a lot.

S. 32AB  
inserted by No. 69/2006 s. 211.

32AB No power to compulsorily acquire

An owners corporation cannot under section 32(b) acquire land by compulsory process.

S. 32AC  
inserted by No. 69/2006 s. 211.

32AC Creation of roads and reserves

(1) The owners corporation may exercise its powers over land under section 32(m) even though the land is not, and will not after the exercise of the power become, land affected by the owners corporation.

(2) The owners corporation cannot exercise its powers over land under section 32(m) so that the land vests in itself.

S. 32AD  
inserted by No. 69/2006 s. 211.

32AD Registration of plan

(1) If it proceeds under section 32, an owners corporation must submit for certification and lodge for registration a plan showing the changes to be made to any registered plan.

(2) Section 22 applies to a plan resulting from the exercise by the owners corporation of its powers over land under section 32 as if it included a requirement that the registered proprietor of land in the plan that is not land affected by the owners corporation must consent to the registration of the plan.

(3) To the extent that a plan referred to in subsection (1) affects common property, consent to the plan is not required by any person in respect of any lot if the common property is not vested in the owners of that lot.

(4) If a plan referred to in subsection (1) relates to some but not all of the land in the registered plan and does not relate to common property, consent to the registration of the plan is not required by any person in respect of land that is not the subject of the plan.

(5) Despite section 24, on the registration of a plan under this section, the Registrar may if appropriate—

(a) create a folio of the Register for the existing common property and a folio of the Register for newly created common property in the name of a relevant owners corporation; or

(b) create in the name of the relevant owners corporation a single folio of the Register for existing and newly created common property.

S. 32AE  
inserted by No. 69/2006 s. 211.

32AE Lot liability and lot entitlement

In exercising its powers under section 32 to create, alter or extinguish lot entitlement or lot liability, an owners corporation must comply with sections 33(2) and 33(3).

S. 32AF  
inserted by No. 69/2006 s. 211.

32AF Land to which powers may apply

(1) An owners corporation may only exercise its powers under section 32 in relation to—

(a) land affected by it; or

(b) land (whether on the same or another plan) which, when the power is exercised, will become land affected by it.

(2) If the exercise by an owners corporation of its powers under section 32 involves land affected by another owners corporation (whether on the same or another plan) and the other owners corporation is not a limited owners corporation all of whose members are members of the first owners corporation, the first owners corporation must first get from the members of the other owners corporation their consent by unanimous resolution.

S. 32AG  
inserted by No. 69/2006 s. 211.

32AG Dissolution of owners corporation

If an owners corporation exercises its power under section 32(g) to dissolve itself—

(a) the Registrar must not amend or cancel the plan to give effect to the exercise of that power unless satisfied that the owners corporation has no accrued or accruing debts; and

(b) the owners corporation is dissolved when the Registrar amends or cancels the plan.

S. 32AH  
inserted by No. 69/2006 s. 211.

32AH Merger of owners corporations

If an owners corporation merges with another owners corporation—

(a) the plan giving effect to the merger must specify the name (by reference to a relevant plan number) of the new owners corporation, the land affected by it, and all relevant lot entitlements and liabilities, and whether it is a limited or unlimited owners corporation; and

(b) on the registration of that plan—

(i) the merging owners corporations are dissolved; and

(ii) land affected by those owners corporations ceases to be so affected; and

(iii) the new owners corporation is the successor in law of the merging owners corporations; and

(iv) if a new limited owners corporation succeeds an unlimited owners corporation, the new owners corporation has, in respect of the assets, rights, liabilities and obligations which have passed to it from the unlimited owners corporation, all the functions, powers and duties of an unlimited owners corporation.

S. 32AI  
inserted by No. 69/2006 s. 211.

32AI Consolidation, subdivision or alteration

S. 32AI(1) amended by No. 6/2008 s. 37(3), substituted by No. 80/2009 s. 101.

(1) Despite section 32, the owner or owners of a lot or lots affected by an owners corporation on a registered plan may proceed under this subsection to consolidate, subdivide or alter the lot or lots owned if the consolidation, subdivision or alteration—

(a) subject to subsection (1A), does not alter the boundaries or area of existing common property; and

(b) does not alter the boundaries or lot entitlement or liability of lots not being consolidated, subdivided or altered; and

(c) does not add an area of land that is more than 10% or, if another percentage is prescribed, that prescribed percentage, of the area of the land in the lot or lots to be consolidated, subdivided or altered to the land affected by the owners corporation.

S. 32AI(1A) inserted by No. 80/2009 s. 101.

(1A) A consolidation, subdivision or alteration under subsection (1) may provide for the addition of new common property if—

(a) a new limited owners corporation is created in respect of that common property; and

(b) the new limited owners corporation is comprised solely of the lot owners who are parties to the consolidation, subdivision or alteration.

(2) If an owner proceeds under subsection (1), the owner must submit for certification and lodge for registration a plan showing the changes to be made to the registered plan.

(3) Consent to the registration of the plan is not required by any person in respect of land that is not the subject of the plan.

(4) Despite section 24, on the registration of a plan under this section, the Registrar may, if appropriate—

(a) create a folio of the Register for the existing common property and a folio of the Register for newly created common property in the name of a relevant owners corporation; or

(b) create in the name of the relevant owners corporation a single folio of the Register for existing and newly created common property.

S. 32AJ  
inserted by No. 69/2006 s. 211.

32AJ Restriction on alteration to plan

If an owners corporation is created on a registered plan, the owners corporation or the owner of a lot on that plan must not submit for certification or lodge for registration a plan consolidating, subdividing, or altering the boundaries of any land affected by the owners corporation except—

(a) under this Division or section 23, 32A, 36 or 37; or

(b) in accordance with an order of a court or tribunal under this Act.

S. 32AK  
inserted by No. 69/2006 s. 211.

32AK Identity of owners corporation not affected by alteration of plan

(1) Unless this Part otherwise provides, the alteration of a registered plan under this Division does not affect the legal identity or continuity of operation of the owners corporation.

(2) If the alteration of a registered plan for which there is only one owners corporation (the **first owners corporation**) results in the creation of one or more additional owners corporations, the Registrar may rename the first owners corporation.

(3) An owners corporation that is renamed under subsection (2) is deemed to be the same body under the new name and any reference to that body by the old name in any Act or instrument is deemed to be a reference to that body by its new name.

S. 32AL  
inserted by No. 69/2006 s. 211.

32AL Registration of plan of consolidation

(1) On the registration of a plan of consolidation of all the land affected by an owners corporation into a single lot—

(a) that owners corporation is dissolved; and

(b) if the land is also land affected by another owners corporation, that other owners corporation is dissolved; and

(c) the land vests in the former lot owners who are members of the owners corporation exercising the power, as tenants in common in proportion to their lot entitlements in that owners corporation, freed from any caveat, mortgage, charge, lease, sub-lease and from any easement under section 12; and

(d) the Registrar must create a folio of the Register accordingly.

(2) The Registrar must not register a plan referred to in subsection (1) unless satisfied that the owners corporation on the registered plan has no accrued or accruing debts.

Division 4—General provisions relating to plans

S. 32A substituted by No. 69/2006 s. 211.

32A Total consolidation or re-subdivision

S. 32A(1) substituted by No. 80/2009 s. 102(1).

(1) All of the owners of lots on a plan who are members of one or more owners corporations may submit for certification, and lodge for registration, a plan consolidating or re-subdividing all of the land on the plan that is affected by the owners corporation or owners corporations.

(2) The Registrar must not register the plan unless satisfied that each owners corporation on the existing plan has no accrued or accruing debts.

S. 32A(3) substituted by No. 80/2009 s. 102(2).

(3) If a plan is registered under subsection (1), then on registration of the plan—

(a) any owners corporation on the previous registered plan that affected the land is dissolved; and

(b) if the land affected by an owners corporation in the previous registered plan was vested in one lot owner, the land vests in that lot owner; and

(c) if the land affected by an owners corporation in the previous registered plan was vested in more than one lot owner, the land vests in the former lot owners who were members of that owners corporation as tenants in common in proportion to their lot entitlements in that owners corporation; and

(d) the land is freed from—

(i) any caveat, mortgage, charge, lease or sub-lease; or

(ii) any easement under section 12, unless the easement affected the land before the registration of the previous registered plan.

S. 32B substituted by No. 69/2006 s. 211.

32B New plan may create owners corporation

(1) The owners of lots on one or more plans that are not lots affected by an owners corporation may submit for certification and lodge for registration a plan providing for the creation of one or more limited or unlimited owners corporations and amending any registered plan in any way necessary because of that creation.

(2) The plan must not provide for the creation of common property or the alteration of existing boundaries.

(3) Consent to the registration of the plan is not required by any other person in respect of any land that is not the subject of the plan.

S. 33 substituted by No. 69/2006 s. 211.

33 How can lot entitlement and liability be altered?

S. 33(1) amended by No. 42/2017 s. 61.

~~(1) If there is a unanimous resolution of the members, the owners corporation may apply to the Registrar in the form approved by the Registrar to alter the lot entitlement or lot liability.~~

(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) In making any change to the lot entitlement, the owners corporation must have regard to the value of the lot and the proportion that value bears to the total value of the lots affected by the owners corporation.~~

~~(3) In making any change to the lot liability, the owners corporation must consider the amount that it would be just and equitable for the owner of the lot to contribute towards the administrative and general expenses of the owners corporation.~~

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

S. 34 substituted by No. 69/2006 s. 211.

34 Recording of changes to a plan

(1) The Registrar must record all changes and alterations.

(2) An owners corporation must inform the Registrar of any change of its address.

(3) A notice to an owners corporation may be served by post and is properly addressed if the address in the notice is the one shown in the records of the Registrar.

Division 5—Disputes and other proceedings relating to owners corporations

S. 34A inserted by No. 69/2006 s. 211.

34A Disputes relating to owners corporations—general

(1) This section applies if a dispute or any other matter arises under this Act or the regulations and affects—

(a) an owners corporation; or

(b) an owner of land affected by an owners corporation; or

(c) a purchaser in possession under a terms contract of a lot affected by an owners corporation.

(2) The owners corporation, owner of a lot or purchaser may apply to the Victorian Civil and Administrative Tribunal for an order determining the dispute or matter.

(3) The Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

S. 34B inserted by No. 69/2006 s. 211.

34B Disputes about easements

(1) This section applies if a dispute or other matter arises between the owners of lots, roads or reserves on a plan, in relation to—

(a) an easement implied by section 12; or

(b) the exercise of rights conferred by the easement; or

(c) interference with the easement; or

(d) maintenance or repair obligations in relation to the easement.

(2) Any of the owners may apply to the Victorian Civil and Administrative Tribunal for an order determining the dispute or matter.

(3) The Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

S. 34C inserted by No. 69/2006 s. 211.

34C VCAT may refer matter to County Court

The Victorian Civil and Administrative Tribunal may refer a dispute or other matter to which section 34A or 34B applies to the County Court, on its own motion or on the application of a party if the Tribunal is satisfied that it ought to be so referred having regard to—

(a) the fact that the dispute or other matter raises a question of general importance; and

(b) this Act and the regulations; and

(c) the complexity of the matter; and

(d) the amount (if any) in dispute.

S. 34D inserted by No. 69/2006 s. 211.

34D Applications relating to plans

(1) A member of the owners corporation, an owners corporation, an administrator of an owners corporation or a person with an interest in the land affected by the owners corporation may apply to the Victorian Civil and Administrative Tribunal for—

(a) an order requiring or authorising the owners corporation to do any of the things set out in section 32 or 33; or

(b) an order consenting on behalf of a member or group of members of an owners corporation to the doing by the owners corporation of any of the things set out in section 32 or 33; or

(c) an order consenting on behalf of a person whose consent to the registration of a plan is required under section 22; or

(d) an order restraining the owners corporation from doing any action under this Act or the regulations.

(2) The Victorian Civil and Administrative Tribunal may make an order on an application under subsection (1)(a) even though there is no unanimous resolution of the owners corporation authorising the action.

(3) The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(b) unless it is satisfied that—

(a) the member or group of members cannot vote because the member is or the members are dead, out of Victoria, or cannot be found; or

(b) for any other reason it is impracticable to obtain the vote of the member or members; or

~~(c) the member has or members have refused consent to the proposed action and—~~

~~(i) more than half of the membership of the owners corporation having total lot entitlements of more than half of the total lot entitlement of the members of the owners corporation consent to the proposed action; and~~

~~(ii) 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 members who did not consent to the action.~~

(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.

(4) For the purposes of sections 32 and 33, an order made on an application under subsection (1)(b) is to be treated as a vote by the member in favour of the proposed action of the plan.

(5) The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(c) unless it is satisfied that—

(a) the person whose consent is required is dead or out of Victoria or cannot be found; or

(b) it is otherwise impracticable to obtain the person's consent; or

(c) it is impracticable to serve the person with the notice under section 22(1B).

(6) Subject to this section, the Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

S. 34E inserted by No. 69/2006 s. 211.

34E Application for order requiring owners corporation to comply

(1) A person (including a Minister, the Council or a public authority) for whose benefit a requirement or duty is imposed on an owners corporation by this Act or the regulations may apply to the Victorian Civil and Administrative Tribunal for an order compelling the owners corporation to carry out the requirement or perform the duty.

(2) The Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

S. 34F inserted by No. 69/2006 s. 211.

34F Order to Registrar

The Victorian Civil and Administrative Tribunal may in an order under this Division direct or authorise the Registrar to dispense with the delivery of any certificate of title or duplicate instrument or other document.

Division 6—Winding up of owners corporation

S. 34G inserted by No. 69/2006 s. 211.

34G Winding up of an owners corporation

(1) An owners corporation, a member of the owners corporation, an administrator of an owners corporation or a registered mortgagee may apply to the Victorian Civil and Administrative Tribunal for the winding up of the owners corporation.

(2) The Victorian Civil and Administrative Tribunal may order the owners corporation to be wound up if it decides that is just and equitable.

(3) A person claiming an estate or interest in the land, a creditor of the owners corporation and an insurer who has insurance over any part of the land have a right to be heard in an application.

(4) Notice of an application must be served on the Registrar who must record the notice in the prescribed manner.

(5) The Victorian Civil and Administrative Tribunal may make any directions or impose any conditions or vary, modify or cancel the order   
as it thinks fit.

S. 34H inserted by No. 69/2006 s. 211.

34H Cancellation or amendment of plan on winding up

(1) If the Victorian Civil and Administrative Tribunal makes an order under section 34G in respect of an unlimited owners corporation, the applicant for the order may apply to the Registrar for the amendment or cancellation of the plan and the Registrar may amend or cancel the plan in accordance with the order.

(2) If the Victorian Civil and Administrative Tribunal makes an order under section 34G in respect of a limited owners corporation, the applicant for the order may apply to the Registrar for the amendment of the plan and the Registrar may amend the plan in accordance with the order.

(3) An unlimited owners corporation is dissolved when the Registrar amends or cancels the plan under subsection (1) and, subject to the order of the Victorian Civil and Administrative Tribunal, the lots and common property (if any) become a single lot and vest in the former lot owners as tenants in common, in proportion to their lot entitlements and the Registrar must create a folio of the Register accordingly.

(4) A limited owners corporation is dissolved when the Registrar amends the plan under subsection (2).

(5) After amending or cancelling the plan, the Registrar must notify the Council.