

# Owners Corporation Bill

## Exposure Draft

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Victoria

# Owners Corporation Bill

## Exposure Draft

### PART 1—INTRODUCTORY

#### 1.1 Purpose

The main purposes of this Act are—

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

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Part 1—Introductory

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**1.2 Commencement**

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

**1.3 Definitions**

In this Act—

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

**"approved form"** means form approved by the Director under section 13.1;

**"building"** includes—

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

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

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

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

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

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Part 1—Introductory

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**"Director"** has the same meaning as it has in the **Fair Trading Act 1999**;

**"function"** includes duty and authority;

**"insolvent under administration"** means—

- (a) a person who is an undischarged bankrupt; or
- (b) a person for whom a debt agreement has been made under Part IX of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the debt agreement has not ended or has not been terminated; or
- (c) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the terms of the deed have not been fully complied with; or
- (d) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if a final payment has not been made under that composition;

**"inspector"** means an inspector appointed under the **Fair Trading Act 1999**;

**"land"** includes buildings and airspace;

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Part 1—Introductory

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**"land affected by an owners corporation"**

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

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

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

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

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

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

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

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

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

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Part 1—Introductory

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**"owners corporation register"** means the register kept by an owners corporation in accordance with section 9.4;

**"plan"** has the same meaning as it has in the **Subdivision Act 1988**;

**"prescribed owners corporation"** means an owners corporation of a class prescribed by the regulations;

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

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

**"rules"** in relation to an owners corporation, means the rules of the owners corporation;

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

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Part 2—Functions and Powers of Owners Corporation

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**PART 2—FUNCTIONS AND POWERS OF OWNERS  
CORPORATION**

**Division 1—Functions and Powers of Owners Corporation**

**2.1 Functions of owners corporation**

An owners corporation has the following functions—

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

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Part 2—Functions and Powers of Owners Corporation

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

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

## **2.2 Owners corporation must act in good faith**

An owners corporation in carrying out its functions and powers—

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

## **2.3 Powers of owners corporation**

An owners corporation has—

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

## **2.4 Limitations on powers**

If an owners corporation is specified on a plan as being limited to the common property, sections 3.26, 3.27, 3.28, 3.29, 7.4 and 7.5 do not apply to that owners corporation.

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Part 2—Functions and Powers of Owners Corporation

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**2.5 Power to employ or engage persons**

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

**2.6 Power to execute documents etc.**

An owners corporation may in its own name and on behalf of the lot owners execute any document or do anything necessary or convenient to enable it to carry out its functions, powers, rights and obligations, and the document or thing has effect as if executed or done by the lot owners.

Note: An owners corporation executes a document by the use of its common seal.

**2.7 Power to delegate**

An owners corporation may by instrument delegate any power or function of the owners corporation that the owners corporation has determined under section 4.17 requires an ordinary resolution at a general meeting (other than this power of delegation) to—

- (a) the committee of the owners corporation;
- (b) the manager of the owners corporation;
- (c) a lot owner;
- (d) the chairperson of the owners corporation;
- (e) the secretary of the owners corporation;
- (f) an employee of the owners corporation.

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Part 2—Functions and Powers of Owners Corporation

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**Division 2—Powers Relating to Services**

**2.8 Provision of services to members and occupiers**

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

**2.9 Owners corporation not to carry on business**

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

**Division 3—Powers Relating to Property**

**2.10 Leasing or licensing of the common property**

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

**2.11 Power to obtain lease or licence over land**

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

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Part 2—Functions and Powers of Owners Corporation

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**2.12 Power to acquire and dispose of personal property**

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

**2.13 Owners corporation must not mortgage common property**

An owners corporation must not mortgage common property.

**Division 4—Power to Bring Legal Proceedings**

**2.14 Power to bring legal proceedings**

- (1) Subject to sub-section (2), an owners corporation must not bring legal proceedings unless it is authorised by a special resolution to do so.
- (2) A special resolution is not required for an application to VCAT under Part 11 to recover fees and other money or to enforce the rules of the owners corporation.

**Division 5—The Common Seal**

**2.15 The common seal**

- (1) The common seal of an owners corporation must include the name of the owners corporation.
  - (2) The common seal must be kept as directed by the owners corporation.
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Part 2—Functions and Powers of Owners Corporation

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**2.16 When can the common seal be used?**

- (1) The common seal of an owners corporation must not be used on a document unless its use for that purpose has been authorised by a resolution of the owners corporation at a general meeting.
- (2) The resolution to authorise the use of the common seal must be recorded—
  - (a) in the minutes of the general meeting; and
  - (b) if the owners corporation keeps a common seal register, in that register.

**2.17 Who must witness the use of the common seal?**

- (1) The use of the common seal on a document must be witnessed by at least 2 lot owners.
- (2) Despite sub-section (1), in the case of an owners corporation with only one lot owner, the use of the seal must be witnessed by the lot owner.
- (3) Each lot owner who witnesses the use of the common seal must record next to the seal that he or she has witnessed the use of the seal by—
  - (a) signing his or her name; and
  - (b) printing in full his or her name and address; and
  - (c) stating that he or she is a lot owner.

**2.18 Judicial notice of use of common seal**

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

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Part 3—Financial Management

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**PART 3—FINANCIAL MANAGEMENT**

**Division 1—Financial Powers**

**3.1 Owners corporation may levy fees**

- (1) An owners corporation may set annual fees to cover—
  - (a) general administration; and
  - (b) maintenance and repairs; and
  - (c) insurance; and
  - (d) other recurrent obligations of the owners corporation.
- (2) The fees set must be based on lot liability.
- (3) The owners corporation may determine the times for payment of fees.
- (4) If the owners corporation has a maintenance plan, the annual fees for maintenance and repairs must include fees that are—
  - (a) designated for the purpose of the maintenance plan; and
  - (b) sufficient to allow the maintenance plan to be implemented.

**3.2 Extraordinary fees**

- (1) An owners corporation may levy special fees and charges designed to cover extraordinary items of expenditure.
  - (2) The fees set must be based on lot liability.
  - (3) The owners corporation may determine the times for payment of the special fees and charges.
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- (4) A special resolution is required when exercising a power under sub-section (1) if the amount involved is more than twice the total amount of the current annual fees set under section 3.1.

**3.3 Power to borrow money**

- (1) An owners corporation may borrow money—
- (a) by ordinary resolution at a general meeting, if the amount borrowed does not exceed the amount of the current annual fees of the owners corporation set under section 3.1; or
  - (b) by special resolution in any other case.
- (2) An owners corporation may repay money borrowed.

**3.4 Power to invest**

An owners corporation may invest money.

**3.5 Bank account**

- (1) An owners corporation may establish and operate bank accounts.
- (2) Each bank account must be established in the name of the owners corporation.
- (3) A separate bank account must be established and operated for a maintenance fund of the owners corporation.

**3.6 Liability of lot owners**

- (1) The owners for the time being and any purchaser in possession of, and any person entitled to receive the rents and profit from, a lot are liable to pay any outstanding fees, charge, contribution or amount owing to the owners corporation in respect of that lot.

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- (2) A lot owner is not liable to pay or contribute to the funds of the owners corporation a proportion of any amount required to discharge a liability of the owners corporation exceeding the lot owner's lot liability.
- (3) Sub-section (2) does not apply to an amount payable to an owners corporation for repairs, maintenance or other works that are undertaken by the owners corporation on common property or a lot, and which are wholly or substantially for the benefit of some or one, but not all, of the lots affected by the owners corporation.

**3.7 Occupier may be liable for fees and charges**

If an occupier of a lot has entered into an agreement with the lot owner to pay to the owners corporation any fees or charges determined in respect of the lot under this Division, the owners corporation may recover those fees and charges from the occupier and for that purpose sections 3.10 and 3.11 and Division 1 of Part 11 apply as if the occupier were the lot owner.

**3.8 Penalty interest on arrears**

- (1) An owners corporation may charge interest on any amount payable by a lot owner or by an occupier referred to in section 3.7 to the owners corporation that is still outstanding after the due date for payment.
- (2) The rate of interest charged must not exceed the maximum rate of interest payable under the **Penalty Interest Rates Act 1983**.
- (3) The owners corporation may waive the payment of interest in a particular case.

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**3.9 Recovery of money owed**

- (1) Subject to sub-section (2), an owners corporation may recover any money owed to the owners corporation in any court of competent jurisdiction as a debt due to the owners corporation.
- (2) Sections 3.10 and 3.11 and Division 1 of Part 11 apply to the recovery of money owed to the owners corporation by a lot owner.

**3.10 Fee notice**

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

**3.11 Final notice**

- (1) If the money owing is not paid within 28 days after the date of the fee notice, the owners corporation may send a final notice in the approved form to the lot owner.

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- (2) The final notice must—
- (a) state that the lot owner has an obligation to pay the overdue fees and charges and interest immediately; and
  - (b) (if applicable) state—
    - (i) the interest that is payable in respect of the overdue fees and charges at the date of the notice; and
    - (ii) the amount of interest that will accrue daily until the payment of the overdue fees and charges; and
  - (c) state that the owners corporation intends to take action under Part 11 to recover the amount due if the overdue fees and charges and interest owing are not paid within 28 days after the date the notice is given.

Note: Section 11.2(2) provides that an application to VCAT by the owners corporation for an order requiring a lot owner to pay an amount payable by the lot owner to the owners corporation can only be made if the amount is not paid within 28 days after the final notice is given under section 3.11.

**Division 2—Accounts and Audit**

**3.12 Financial records**

An owners corporation must keep proper books of account that—

- (a) cover all income and expenditure of the owners corporation and assets and liabilities of the owners corporation; and
- (b) would enable true and fair financial statements to be prepared and audited.

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**3.13 Financial statements**

- (1) An owners corporation must prepare annual financial statements for presentation at the annual general meeting of the owners corporation.
- (2) A prescribed owners corporation must prepare its financial statements in accordance with the standards required by the regulations.

**3.14 Audit of accounts of owners corporations**

- (1) An owners corporation at its annual general meeting may resolve that its financial statements are to be audited after the end of the financial year by—
    - (a) a registered company auditor; or
    - (b) a firm of registered company auditors; or
    - (c) a person who is a member of CPA Australia or the Institute of Chartered Accountants in Australia; or
    - (d) any other person who is approved by the Director as an auditor of the financial statements of the owners corporation for the purposes of this section.
  - (2) A prescribed owners corporation must, after the end of each financial year cause its financial statements to be audited by—
    - (a) a registered company auditor; or
    - (b) a firm of registered company auditors; or
    - (c) a person who is a member of CPA Australia or the Institute of Chartered Accountants in Australia; or
    - (d) any other person who is approved by the Director as an auditor of the financial statements of the owners corporation for the purposes of this section.
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- (3) A person who audits the accounts of an owners corporation must provide the owners corporation with a written report of the audit.
- (4) A person may not be appointed as auditor of the accounts of the owners corporation for the purposes of this section if the person is—
  - (a) a lot owner; or
  - (b) an occupier of a lot; or
  - (c) a member of the committee of the owners corporation; or
  - (d) an employer or employee of a member of that committee; or
  - (e) a member of the same partnership as a member of that committee; or
  - (f) an employee of the owners corporation.
- (5) The Director may grant approval to a suitably qualified person or class of suitably qualified persons (other than a person referred to in sub-section (4)) to audit the accounts of an owners corporation or a class of prescribed owners corporations.
- (6) An owners corporation may apply in writing to the Director for an exemption from the requirements of sub-section (2).
- (7) The Director may grant the exemption subject to any conditions the Director thinks fit.
- (8) The Director may at any time, by notice in writing, vary or revoke an exemption under this section.

### **Division 3—Maintenance Plan**

#### **3.15 Maintenance plan**

- (1) A prescribed owners corporation must prepare a maintenance plan for the property for which it is responsible.
- (2) An owners corporation (other than a prescribed owners corporation) may prepare a maintenance plan for the property for which it is responsible.

#### **3.16 What must a maintenance plan contain?**

- (1) The maintenance plan must set out—
    - (a) the major capital items anticipated to require repair and replacement within the next 10 years; and
    - (b) the present condition or state of repair of those items; and
    - (c) when those items or components of those items will need to be repaired or replaced; and
    - (d) the estimated cost of the repair and replacement of those items or components; and
    - (e) the expected life of those items or components once repaired or replaced; and
    - (f) any other prescribed information.
  - (2) In this section—

**"major capital item"** includes—

    - (a) a lift; or
    - (b) an air conditioning plant; or
    - (c) a heating plant; or
    - (d) an item of a prescribed class.
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**3.17 When does a maintenance plan take effect?**

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

**Division 4—Maintenance Fund**

**3.18 Establishment of maintenance fund**

- (1) An owners corporation that has a maintenance plan must establish a maintenance fund in the name of the owners corporation.
- (2) A maintenance fund must be kept separate from all other funds of the owners corporation.

**3.19 What is the maintenance fund for?**

The maintenance fund of an owners corporation must be used for the implementation of the maintenance plan of the owners corporation.

**3.20 Payments into maintenance fund**

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

- (a) any part of the annual fees that is designated as being for the purpose of the maintenance plan;
- (b) any amounts received under an insurance policy in respect of the damage or destruction of property covered by the maintenance plan;
- (c) any interest earned on the investment of the money in the fund;

- (d) any amounts of a prescribed kind;
- (e) any amounts of a kind determined by the owners corporation.

### **3.21 Expenditure from maintenance fund**

Subject to any conditions specified in the regulations and an ordinary resolution at a general meeting of the owners corporation, money may be paid out of the maintenance fund at any time in accordance with the maintenance plan.

### **3.22 Extraordinary payments from maintenance fund on special resolution**

Money may also be paid out of the maintenance fund if the owners corporation by special resolution approves the payment.

### **3.23 Extraordinary payments from maintenance fund for urgent matters**

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

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- (d) to enable the owners corporation to obtain adequate insurance for the property that the owners corporation is required to insure.
- (3) Expenditure under this section must not exceed—
  - (a) the amount necessary for the purpose for which it is expended; or
  - (b) any limitation imposed by the owners corporation on expenditure under this section.
- (4) Expenditure under this section must comply with any other restrictions or requirements imposed by the owners corporation.
- (5) The owners corporation must report to the lot owners on any expenditure under this section, as soon as possible after the expenditure is made.

**Division 5—Asset Management**

**3.24 Owners corporation to repair and maintain common property**

An owners corporation must repair and maintain—

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

**3.25 Owners corporation must repair and maintain services**

- (1) An owners corporation must repair and maintain a service in or relating to a lot that is for the benefit of lots owned by more than one lot owner and the common property.

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(2) An owners corporation may, at the request and expense of a lot owner, repair and maintain a service in or relating to a lot if it is impracticable for the lot owner to repair or maintain that service.

(3) In this section—

**"service"** includes an easement or right implied over the land affected by the owners corporation or for the benefit of each lot and any common property by section 12(2) of the **Subdivision Act 1988**.

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

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

### **3.26 Repairs and maintenance of lots**

(1) If a lot owner has refused or failed to carry out repairs, maintenance or other works to the lot owner's lot that are required because—

- (a) the outward appearance or outward state of repair of the lot is adversely affected; or
- (b) the use and enjoyment of the lots or common property by other lot owners is adversely affected—

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

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- (2) If a lot owner has been served with a notice under sub-section (1), the lot owner must carry out the repairs, maintenance or other works required by the notice within 28 days of the service of the notice.
- (3) If a lot owner has been served with a notice under sub-section (1) and has not complied with the notice within the required time, the owners corporation may carry out the necessary repairs, maintenance or other works to the lot.

**3.27 Cost of repairs, maintenance or other work**

- (1) An owners corporation may recover as a debt from a lot owner the cost of repairs, maintenance or other work carried out under section 3.26(3).
- (2) An owners corporation may recover as a debt the cost of repairs, maintenance or other work undertaken wholly or substantially for the benefit of some only of the lots from the lot owners, but the amount payable by those lot owners is to be calculated on the basis that the lot owner of the lot that benefits more pays more.
- (3) The works referred to in sub-section (2) may be to the common property or a lot.

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

An owners corporation may authorise a person to enter a lot or a building on a lot on its behalf to carry out repairs, maintenance or other works in accordance with section 3.25(1), 3.25(2) or 3.26(3).

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**3.29 What notice must be given?**

- (1) The owners corporation must give at least 7 days notice in writing to the occupier of a lot of its intention to enter the lot unless—
  - (a) the occupier agrees to a lesser time; or
  - (b) there is an emergency.
- (2) Despite sub-section (1), if the lot is occupied under a residential tenancy agreement, the owners corporation must give the same notice to the occupier as that required by a landlord under section 85 of the **Residential Tenancies Act 1997**.
- (3) In this section—

**"emergency"** includes—

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

**3.30 Significant alteration to common property requires special resolution**

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

- (a) the alteration is—
    - (i) first approved by a special resolution at a general meeting of the owners corporation; or
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- (ii) permitted by the maintenance plan; or
- (iii) is agreed to under section 3.31; or
- (b) there are reasonable grounds to believe that an immediate alteration is necessary to ensure safety or to prevent significant loss or damage.

**3.31 Upgrading of common property**

- (1) An owners corporation may by special resolution approve the carrying out of upgrading works for the common property and the levying of fees on lot owners for that purpose.
- (2) In this section "**upgrading works**" means building works for the upgrading, renovation or improvement of the common property where—
  - (a) the total cost of the works is estimated to be more than twice the total amount of the current annual fees; or
  - (b) the works require a planning permit or a building permit before they can be carried out—

but does not include works that are provided for in a maintenance plan or works referred to in section 2.1(b).

**Division 6—Insurance**

**3.32 What is an insurable building?**

In this Division—

**"building"** includes any building on the plan of subdivision and—

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

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

but does not include—

(c) carpet and temporary floor, wall and ceiling coverings; or

(d) fixtures removable by a lessee at the end of a lease; or

(e) anything prescribed as not forming part of a building.

**3.33 Members may take out insurance**

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

**3.34 Owners corporation has insurable interest**

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

**3.35 Amount payable under owner's corporation insurance**

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

**3.36 Insurance if lot mortgaged**

(1) If an owners corporation has taken out an insurance policy over the land affected by the owners corporation, a mortgagee of a lot affected by the owners corporation must not require the lot owner to take out an insurance policy over the lot

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and the owner's interest in the common property unless—

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

**3.37 Owners corporation must have reinstatement and replacement insurance**

- (1) An owners corporation must take out reinstatement and replacement insurance for all buildings on the common property in accordance with this Division.

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- (2) The insurance required under sub-section (1) is insurance for damage to property under which the owners corporation insures for—
- (a) the cost necessary to replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition when new; and
  - (b) the payment of expenses necessarily and reasonably incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary, being incidental to the replacement, repair or rebuilding of the damaged property.
- (3) The owners corporation must ensure that the insurance required under sub-section (1) includes—
- (a) a provision that the interests of mortgagees are noted; and
  - (b) a provision that a mortgagee whose interest is noted shall be given the notices that are required under section 59 of the Insurance Contracts Act 1984 of the Commonwealth at the same time that those notices are given to the insured; and
  - (c) a provision that the insurer cannot avoid the whole contract for breach of a condition of the contract unless the breach is by the owners corporation or all lot owners, but the insurer has a right of indemnity against those lot owners who breach the contract.

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**3.38 Public liability insurance**

- (1) An owners corporation must take out public liability insurance for the common property in accordance with this section.
- (2) The public liability insurance required under sub-section (1) is insurance for any liability of the owners corporation to pay compensation in respect of—
  - (a) any bodily injury to or death or illness of a person; and
  - (b) any damage to or loss of property—  
which is sustained as a result of an occurrence or happening in connection with the common property or the lot.
- (3) The owners corporation must ensure that, in the insurance which the owners corporation has under sub-section (2), the limit of liability is a minimum of \$10 000 000, or if another amount is prescribed, that other amount, in any one claim and in the aggregate during any one period of insurance.

**3.39 Insurance for lots in multi-level developments**

If a building on a plan of subdivision is located above or below common property, a reserve or a lot, the owners corporation must take out the following insurance in respect of all lots in the plan—

- (a) reinstatement and replacement insurance for all buildings on each lot in accordance with section 3.37; and
  - (b) public liability insurance in accordance with section 3.38.
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**3.40 Owners corporation may have additional insurance**

At a general meeting, the owners corporation may, by ordinary resolution, resolve to insure any additional insurable interest—

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

**3.41 Insurance not required where there is no common property**

- (1) By unanimous resolution, an owners corporation may resolve that, if there is no common property, each lot owner must arrange for the lot owner's own insurance.
- (2) The owners corporation must give notice of the resolution to the Registrar.
- (3) A resolution under sub-section (1) is not effective until notice of the resolution is recorded by the Registrar.

**3.42 Insurance not required where another owners corporation has insured**

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

**3.43 Valuation of buildings**

- (1) A prescribed owners corporation must obtain a valuation by a registered valuer of all buildings that it is liable to insure.
- (2) The valuation must be obtained every 5 years or earlier as determined by the owners corporation.

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- (3) The owners corporation must present the valuers' report at the next general meeting after it is received.
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Part 4—Meetings and Decisions of Owners Corporation

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**PART 4—MEETINGS AND DECISIONS OF OWNERS CORPORATION**

**Division 1—First Meeting of Owners Corporation**

**4.1 When must the first meeting be held?**

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

**4.2 What documents must be provided at the first meeting?**

At the first meeting of the owners corporation the applicant must provide all of the following for the purposes of the owners corporation—

- (a) the owners corporation register;
- (b) any accounts or records made on behalf of the owners corporation;
- (c) books to enable the owners corporation to keep the necessary minutes, accounts and other records;
- (d) the maintenance plan (if any);
- (e) a copy of the plan of subdivision and all related building plans, planning documents and other similar documents;
- (f) a copy of this Act and the regulations;
- (g) any contracts, leases and licences binding on or benefiting the owners corporation;
- (h) any insurance policies in force in relation to the property, including any insurance policy taken out under section 9AAA of the **Sale of Land Act 1962**;

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- (i) the names of the companies, tradespeople or suppliers who provided a warranty or other guarantee on any matter for which the owners corporation is responsible and copies of those warranties and guarantees;
- (j) the common seal of the owners corporation.

**4.3 Obligations of initial owner**

- (1) Subject to sub-section (3), the initial owner of land affected by an owners corporation must act honestly and in good faith and with due care and diligence in the interests of the owners corporation in exercising any rights under this Act.
  - (2) Subject to sub-sections (3) and (4), the initial owner of land affected by an owners corporation must take all reasonable steps to enforce any domestic building contract (within the meaning of the **Domestic Building Contracts Act 1995**) entered into by the initial owner in respect of land in the plan providing for the creation of the owners corporation.
  - (3) Sub-sections (1) and (2) apply to an initial owner only if the initial owner is the owner of the majority of the lots affected by the owners corporation.
  - (4) Sub-section (2) applies only to the enforcement of a breach of contract—
    - (a) to the extent that it relates to the common property affected by the owners corporation; and
    - (b) of which the initial owner is aware or ought reasonably to be aware.
  - (5) In this section "**initial owner**" means the person who was the applicant under the **Subdivision Act 1988** for the registration of the plan of subdivision.
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**Division 2—Annual General Meeting**

**4.4 Annual general meeting**

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

Note: Section 5.1 provides for the appointment of a committee of the owners corporation at the annual general meeting.

**4.5 Who may convene annual general meetings?**

- (1) The first meeting of an owners corporation convened under section 4.1 is the first annual general meeting.
- (2) All other annual general meetings must be convened by—
  - (a) the chairperson of the owners corporation; or
  - (b) the secretary of the owners corporation; or
  - (c) the manager of the owners corporation, acting on the authority of the committee; or
  - (d) in the absence of a committee, the manager of the owners corporation or a lot owner.

**4.6 Agenda for annual general meeting**

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

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- (c) the notification of the insurance held by the owners corporation;
- (d) the consideration of the financial statements of the owners corporation;
- (e) the consideration of the proposed annual budget of the owners corporation;
- (f) the making of any delegations;
- (g) the consideration of any report under section 3.43(3), 5.15 or 6.6 or under section 10.8 in relation to disputes dealt with under Part 10.

**4.7 Notice of annual general meetings**

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

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

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

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**Division 3—Special General Meetings**

**4.8 What is a special general meeting?**

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

**4.9 Who can convene a special general meeting?**

A special general meeting may be convened by—

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

**4.10 Agenda for special general meeting**

The person convening a special general meeting must prepare an Agenda setting out the matters to be dealt with at the special general meeting.

**4.11 Notice of special general meetings**

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

Note: The **Electronic Transactions (Victoria) Act 2000** will permit this notice to be given electronically.

- (2) The notice must include the following—
  - (a) the date, time and place of the meeting; and
  - (b) the Agenda for the meeting; and

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- (c) the text of any special resolution or unanimous resolution to be moved at the meeting; and
- (d) a statement that the lot owner has the right to appoint a proxy.

**Division 4—Procedure at General Meetings**

**4.12 Quorum for a general meeting**

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

**4.13 Can a general meeting proceed even without a quorum?**

- (1) Subject to sub-section (4), if there is not a quorum, the general meeting may proceed but all decisions are interim decisions.
- (2) Notice of all interim decisions and the minutes of the meeting at which the interim decision is made must be forwarded to all lot owners within 14 days of the meeting.
- (3) The minutes must be accompanied by a notice stating that the interim decision will become a decision of the owners corporation at the end of 29 days after it was made unless notice of a general meeting is given within that period in which case the interim decision will only become a decision of the owners corporation if it is confirmed at that meeting.
- (4) Interim decisions become decisions of the owners corporation—
  - (a) subject to paragraph (b), 29 days from the date of the interim decision; or

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- (b) if notice of a general meeting is given within that 29 day period, only if confirmed at that meeting.

Note: The effect of sub-section (3) is that an interim decision cannot be acted on for 29 days after it is made but if notice of a general meeting is given within that 29 day period, the interim decision cannot be acted on until the decision is confirmed at that meeting (which may be held before or after the end of the 29 day period).

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

**4.14 Who chairs the general meeting?**

The chairperson of the owners corporation chairs a general meeting.

**4.15 Procedure at meeting**

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

**4.16 Minutes of meetings**

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

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

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

**Division 5—Ballots**

**4.18 Who can arrange a ballot?**

A ballot of an owners corporation may be arranged by—

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

**4.19 How can a ballot be conducted?**

A ballot may be conducted by post or by electronic communication.

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**4.20 Notice of ballot**

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

Note: The **Electronic Transactions (Victoria) Act 2000** will permit this notice to be given electronically.

- (2) The notice must include the following—
  - (a) the closing date for the ballot; and
  - (b) the ballot document containing the motion, including the text of any special resolution or unanimous resolution, to be voted on in the ballot; and
  - (c) a statement that the lot owner has the right to appoint a proxy.

**4.21 Decision on ballot**

- (1) A person may vote in a 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.
- (2) A decision of the owners corporation by ballot is made as follows—
  - (a) matters requiring an ordinary resolution must be passed by a majority of the votes returned by the closing date but the number of votes returned must be not less than the number needed for a quorum in accordance with section 4.12;
  - (b) other matters must be passed by a special resolution or unanimous resolution, as appropriate.

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

Note: There is no interim decision process on a ballot.

**Division 6—Proxies and Powers of Attorney**

**4.22 Proxies**

- (1) A lot owner may authorise a person in writing to act as proxy for any of the following—
- (a) to attend, speak or vote on the lot owner's behalf at a meeting of the owners corporation;
  - (b) to vote on the lot owner's behalf at a ballot;
  - (c) to represent the lot owner on the committee of the owners corporation.
- (2) The authorisation may set out how to vote on particular matters.
- (3) An authorisation under sub-regulation (1)—
- (a) must be in writing in the prescribed form; and
  - (b) must authorise a named individual; and
  - (c) must not be transferred by the holder of the proxy to a third person; and
  - (d) must be delivered to the secretary of the owners corporation; and
  - (e) is effective from the beginning of the first meeting of the owners corporation held after it is delivered to the secretary; and
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- (f) lapses 12 months after being given or, if there is an earlier date specified in the authorisation, on that date; and
  - (g) is revoked on the date that notice of the revocation is delivered to the secretary.
- (4) A person who is not a lot owner who holds a proxy for a lot owner may not vote on matters affecting himself or herself relating to—
- (a) the delegation of powers and functions under section 2.7; or
  - (b) the appointment, payment or removal of a manager under Part 6.
- (5) A person authorised to act as proxy must act honestly and in good faith and exercise due care and diligence.
- (6) A lot owner may revoke an authorisation given under this section and vote at a meeting or in a ballot instead of the person who was authorised.
- (7) A contract of appointment of a manager made in contravention of sub-section (4)(b) is voidable by the owners corporation unless it is affirmed by the owners corporation by special resolution.

**4.23 Voting under power of attorney**

- (1) A person acting under a power of attorney may vote on the lot owner's behalf at a general meeting or in a ballot of the owners corporation if this is authorised by the power of attorney.
- (2) A person is not entitled to exercise, under a power of attorney, the power of a lot owner to vote if the person has that power in respect of another lot owner under another power of attorney.

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- (3) A person acting under a power of attorney for a lot owner may authorise a person to act as a proxy under section 4.22.
- (4) If a person is authorised under a power of attorney to vote on behalf of a lot owner, this Part applies in relation to that power as if the holder of the power of attorney were the lot owner.

**4.24 Person not to require a lot owner to give a power of attorney or proxy**

A person must not require a lot owner to give the person or another person a power of attorney in favour of the person or other person or a proxy for the purpose of voting at a meeting or in a ballot of an owners corporation.

Penalty: 60 penalty units.

**Division 7—Decisions of Owners Corporation**

**4.25 Decisions by meeting or ballot**

Resolutions of the owners corporation may be made—

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

**4.26 One vote for each lot**

There is to be one vote for each lot.

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

**4.27 Voting at a meeting**

- (1) Subject to sub-section (3), at a meeting, voting may be by show of hands or in another prescribed manner, unless the meeting resolves otherwise.

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- (2) All matters other than matters requiring special resolutions and unanimous resolutions must be determined by a simple majority of votes cast at a meeting.
- (3) A lot owner present in person or by proxy may, 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 must be by written vote.
- (5) If a poll is required after the vote is taken, the decision taken on the vote has no effect and the decision on the matter is the decision of the poll.
- (6) A person who participates in a meeting by means of teleconferencing or another prescribed manner is to be taken to be present in person at the meeting.

**4.28 Does the chairperson have a casting vote?**

- (1) The chairperson may only have a second vote or the casting vote if the voting is equal and the chairperson is a lot owner of the owners corporation or votes as proxy for a lot owner.
- (2) If the voting is equal and the chairperson does not exercise a casting vote, the motion is not passed.

**4.29 Can a lot owner vote if fees are unpaid?**

A lot owner whose fees or other amounts owing to the owners corporation are in arrears is not entitled to vote, either in person, by ballot or by proxy, except when a special resolution or unanimous resolution is required.

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**4.30 What is a unanimous resolution?**

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

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

**Example**

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

**4.31 What is a special resolution?**

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

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

**Example**

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

**4.32 Interim special resolutions**

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

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- (2) Notice of the interim special resolution and the minutes of the meeting at which the interim special resolution was passed must be forwarded to all lot owners within 14 days of the meeting.
- (3) The minutes must be accompanied by a notice stating that the interim special resolution will become a special resolution at the end of 29 days after it was passed unless lot owners who hold more than 25% of the total votes for all the lots affected by the owners corporation petition the secretary against the resolution.
- (4) An interim special resolution becomes a special resolution of the owners corporation on the day that is 29 days after the day the interim special resolution was passed unless lot owners who hold more than 25% of the total votes for all the lots affected by the owners corporation petition the secretary against the resolution.

Note: The effect of sub-section (4) is that an interim special resolution cannot be acted on for 29 days after it is passed and cannot be acted on at all if a petition is received by the secretary within that 29 day period.

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Part 5—Committees

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**PART 5—COMMITTEES**

**5.1 Election of committee**

- (1) An owners corporation with 13 or more lot owners must elect a committee at each annual general meeting.
- (2) An owners corporation with less than 13 lot owners may elect a committee at an annual general meeting.

**5.2 Functions and powers of committee**

- (1) Subject to this section and the rules, a committee has all the powers and functions that may be delegated by the owners corporation under section 2.7.

Note: Powers and functions that require a unanimous resolution or a special resolution or an ordinary resolution at a general meeting of the owners corporation cannot be delegated under section 2.7.

- (2) Sub-section (1) does not apply to a matter or type of matter that the owners corporation has determined may be determined only by ordinary resolution of the owners corporation at a general meeting.

Note: See section 4.17.

- (3) In addition to any powers and functions under this Act or the regulations, the committee has the functions determined by the owners corporation.

**5.3 Delegation by committee**

- (1) A committee may by instrument delegate any of its powers and functions to—
  - (a) the manager; or
  - (b) a lot owner.

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

**5.4 Membership of committees**

- (1) A committee of an owners corporation must have at least 3 and not more than 12 members.
- (2) The members of the committee must be lot owners or hold proxies on behalf of lot owners.
- (3) There must not be more than one member of the committee from any one lot.
- (4) A lot owner or a proxy for a lot owner may nominate for election as a member of the committee—
  - (a) in writing; or
  - (b) orally if the lot owner is present at the annual general meeting.
- (5) Subject to this Act and the regulations, the members of the committee hold office from their election until a new committee is elected.
- (6) The owners corporation may at an annual general meeting or special general meeting resolve to add or remove a committee member or replace or remove a committee.
- (7) If a lot owner is in arrears for any amount of fees or other amount owing to the owners corporation—
  - (a) the lot owner or a proxy for the lot owner is not eligible to be elected as a member of the committee; and

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- (b) if the lot owner or a proxy for a lot owner is a member of the committee at the time the amount came into arrears, the lot owner is suspended as a member of the committee until the amount is paid.

**5.5 Casual vacancies on a committee**

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

**5.6 Chairperson of committee**

- (1) The members of the committee must appoint a member of the committee to be the chairperson.
- (2) The chairperson of the committee is also the chairperson of the owners corporation.
- (3) In addition to any duties under this Act or the regulations, the chairperson has the duties determined by the owners corporation.

**5.7 Secretary of committee**

- (1) The members of the committee must appoint a member of the committee to be the secretary of the committee.
  - (2) The secretary of the committee is also the secretary of the owners corporation.
  - (3) In addition to any duties under this Act or the regulations, the secretary has the duties determined by the owners corporation.
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Part 5—Committees

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**5.8 How can a meeting of a committee be called?**

A meeting of a committee may be called by—

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

**5.9 Notice of meetings**

- (1) The secretary must give notice of a meeting of the committee to the members of the committee.
- (2) The notice must be given—
  - (a) at least 3 days (excluding public holidays) before the meeting; or
  - (b) as determined by the owners corporation.
- (3) The notice must set out—
  - (a) the time and place of the meeting; and
  - (b) the agenda for the meeting.

**5.10 Co-opted members**

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

**5.11 Ballots**

- (1) A ballot held by a committee must be held in accordance with this section.
- (2) A notice in writing containing the proposed resolution to be voted on must be sent to each member of the committee.

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

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Part 5—Committees

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- (3) The document must set out a date (being not less than 14 days after the date of document) that is to be the closing date for the ballot.
- (4) A resolution for which a ballot is held is passed only if a majority of the members of the committee state that they are in favour of the resolution before the closing date for the ballot.

**5.12 Proceedings of committee**

- (1) The quorum for a meeting of a committee is at least half of the members of the committee.
  - (2) A resolution of a committee must be made—
    - (a) by ballot; or
    - (b) by show of hands.
  - (3) Each member present at a meeting is entitled to one vote.
  - (4) A person co-opted to assist the committee is not entitled to vote at a meeting.
  - (5) If a quorum is not present at a meeting of a committee, the members of the committee present may make an interim decision or resolution.
  - (6) An interim decision does not take effect unless it is confirmed—
    - (a) at the next meeting at which a quorum is present; or
    - (b) by ballot under section 5.11; or
    - (c) in accordance with the rules.
  - (7) A decision of the committee is a decision in which a majority of the members present at a meeting of the committee agree is a decision of the committee.
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- (8) In the event of an equality of votes, the chairperson of the committee has a second or casting vote.
- (9) Subject to this Act and the directions of the owners corporation, the committee may regulate its own proceedings.

**5.13 Decisions of committee to be decisions of owners corporation**

A decision of the committee of an owners corporation in respect of any matter has effect as a decision of the owners corporation.

**5.14 Minutes**

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

**5.15 Committee to report**

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

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**5.16 Sub-committees**

- (1) The committee may appoint sub-committees in accordance with the rules.
- (2) The rules may provide for the role and functions of a sub-committee.
- (3) A quorum for a meeting of a sub-committee is at least half the members of the sub-committee.
- (4) Sections 5.6(1), 5.7(1), 5.8, 5.9, 5.10, 5.11, 5.12 and 5.14 apply to a sub-committee as if it were a committee.

**5.17 Duties of committees and sub-committees**

A member of a committee or sub-committee of an owners corporation—

- (a) must act honestly and in good faith in the performance of his or her functions; and
- (b) must exercise due care and diligence in the performance of his or her functions; and
- (c) must not make improper use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person.

**5.18 Immunity of committee and sub-committee members**

An action does not lie against a member of a committee or sub-committee of members of the owners corporation who acts in good faith in accordance with this Act and the regulations in respect of anything done or omitted to be done by the committee or sub-committee or the owners corporation.

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**PART 6—MANAGERS**

**6.1 Appointment and removal of manager**

- (1) An owners corporation may appoint a person to be the manager of the owners corporation.
- (2) If the manager is to receive a fee or reward for carrying out the functions of manager, a person is not eligible to be appointed unless the person is a registered manager.
- (3) An instrument or contract of appointment must be in the approved form.
- (4) A manager need not be a lot owner.
- (5) A person must not be appointed as a manager unless the person holds professional indemnity insurance that is sufficient to meet claims up to a level of the prescribed amount in any one year.
- (6) An owners corporation may revoke the appointment of a manager.

**6.2 Functions of manager where there is a committee**

If there is a committee of the owners corporation, a manager has the functions conferred on the manager by—

- (a) this Act and the regulations; and
  - (b) the instrument or contract of appointment of the manager; and
  - (c) the rules of the owners corporation; and
  - (d) the owners corporation by resolution at a general meeting; and
  - (e) delegation by the owners corporation.
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### **6.3 Functions of manager where there is no committee**

- (1) If there is no committee of the owners corporation, the manager has all the functions and powers that may be delegated by the owners corporation under section 2.7.

Note: Powers and functions that require a unanimous resolution or a special resolution or an ordinary resolution at a general meeting of the owners corporation cannot be delegated under section 2.7.

- (2) Sub-section (1) does not apply to a matter or type of matter that the owners corporation has determined may be determined only by ordinary resolution of the owners corporation at a general meeting.

Note: See section 4.17.

### **6.4 Duties of manager**

A manager—

- (a) must act honestly and in good faith in the performance of the manager's functions; and
- (b) must exercise due care and diligence in the performance of the manager's functions; and
- (c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person.

### **6.5 VCAT may appoint manager**

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

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Part 6—Managers

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**6.6 Report**

- (1) The manager of an owners corporation must submit a report of the manager's activities to each annual general meeting of the owners corporation.
- (2) The report must include details of the professional indemnity insurance held by the manager.

**6.7 Manager to return records**

A manager of an owners corporation must within 28 days after the end of the period of appointment (without renewal) or after being removed as manager return to the secretary of the owners corporation all records relating to or funds of the owners corporation held or controlled by the manager.

Penalty: 60 penalty units.

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Part 7—Duties and Rights of Lot Owners and Occupiers

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**PART 7—DUTIES AND RIGHTS OF LOT OWNERS AND OCCUPIERS**

**7.1 Compliance with laws**

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

**7.2 Care of lots**

A lot owner must—

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

**7.3 Care of common property**

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

**7.4 Overhanging eaves**

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

**7.5 Right to decorate interior walls, floors and ceilings**

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

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Part 7—Duties and Rights of Lot Owners and Occupiers

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

**7.6 Notice of planning and building applications**

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

**7.7 Address of new owners**

A lot owner who sells a lot must advise the owners corporation of the name and address of the new owner within one month of settlement.

**7.8 Address of absent owners**

A lot owner who does not occupy his or her lot or who will be absent from his or her lot for more than 3 months must advise the owners corporation of his or her mailing address for service of notices and any changes to it as soon as possible.

**7.9 Advice to occupiers**

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

- (a) a copy of the rules of the owners corporation, at the commencement of occupation; and
- (b) a copy of any new rules as soon as possible after the new rules are made.

**7.10 Duties of occupiers of lots**

An occupier of a lot—

- (a) must comply with this Act and the regulations under this Act and the rules of the owners corporation; and

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- (b) must not use or neglect the common property or permit it to be used, or neglected in a manner that is likely to cause damage or deterioration to the common property.
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Part 8—Rules of the Owners Corporation

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**PART 8—RULES OF THE OWNERS CORPORATION**

**8.1 Power to make rules**

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

**8.2 Model rules**

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

**8.3 Rules to be of no effect if inconsistent with law**

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

- (a) unfairly discriminates against a lot owner or an occupier of a lot; or
- (b) is unreasonable; or

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Part 8—Rules of the Owners Corporation

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- (c) is inconsistent with or limits a right or avoids an obligation under—
  - (i) this Act; or
  - (ii) the **Subdivision Act 1988**; or
  - (iii) the regulations under this Act; or
  - (iv) the regulations under the **Subdivision Act 1988**; or
  - (v) any other Act or regulation.

**8.4 Who is bound by the rules?**

The rules of an owners corporation are binding on—

- (a) the owners corporation;
- (b) the lot owners;
- (c) any lessee or sub-lessee of a lot;
- (d) any occupier of a lot.

**8.5 Rules to be given to lot owners**

An owners corporation must ensure that—

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

**8.6 Recording of rules**

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

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- (2) If an owners corporation amends any rules under this Act, the owners corporation must lodge with the Registrar a consolidated copy of the rules (incorporating the amendment) that has been certified by the secretary of the owners corporation.
- (3) The Registrar must record the rules on the Register kept under the **Transfer of Land Act 1958**.

**8.7 Rules to be put on noticeboard**

The owners corporation must ensure that a copy of the consolidated rules of the owners corporation is kept on any noticeboard of the owners corporation on the relevant land affected by the owners corporation.

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**PART 9—RECORDS**

**Division 1—Keeping of Records**

**9.1 Keeping of records**

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

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

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

**9.2 How long must records be kept?**

- (1) An owners corporation must keep voting papers and ballots for 12 months after the vote or ballot is taken.
- (2) An owners corporation must keep proxies for 12 months after they expire or are revoked.
- (3) An owners corporation must keep all other documents of a kind set out in section 9.1 for at least 7 years.

**9.3 Availability of records**

- (1) The owners corporation, on request by a lot owner, a mortgagee of a lot, a purchaser of a lot or the representative of a lot owner or mortgagee or purchaser of a lot, must make the records of the owners corporation required to be kept under this Division available to that person for inspection between 9 a.m. and 5 p.m. on a weekday and at any other reasonable time, free of charge.
- (2) The owners corporation may at the request of a person entitled to inspect the records and on payment of a reasonable fee provide a copy of any record of the owners corporation.
- (3) A fee determined by the owners corporation for the purposes of this section must not exceed the prescribed maximum fee.

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**Division 2—Owners Corporation Register**

**9.4 Owners corporation register**

- (1) The applicant for registration of a plan which provides for the creation of an owners corporation must establish an owners corporation register.
- (2) An owners corporation existing on the date of commencement of this Act must establish an owners corporation register within the time prescribed by the regulations.
- (3) An owners corporation must maintain the owners corporation register.

**9.5 What must be kept on the owners corporation register?**

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

- (a) the owners corporation plan number and address;
  - (b) names of the applicants for the registration of the plan of subdivision;
  - (c) name and address of each lot owner;
  - (d) name of the manager, registration number of the manager and contact details of the manager (if any);
  - (e) total lot liability and total lot entitlements;
  - (f) lot liability and lot entitlements for each lot affected by the owners corporation;
  - (g) the basis for the setting of lot liability and lot entitlement (if available);
  - (h) the date of each amendment to the owners corporation rules;
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- (i) details of any notices or orders served on the owners corporation by a court or tribunal or under an Act;
- (j) details of contracts entered into by the owners corporation;
- (k) details of the insurance policies taken out by the owners corporation including—
  - (i) the name of the insurance company;
  - (ii) the number of the insurance policy;
  - (iii) the nature of the risk insured;
  - (iv) the amount of insurance;
  - (v) the due date of the premium;
  - (vi) the date that the premium was last paid.

**9.6 In what form must the register be kept?**

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

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

**9.7 Availability of register**

- (1) The owners corporation, on request by a lot owner, a mortgagee of a lot or a purchaser of a lot or the representative of a lot owner or mortgagee or a purchaser of a lot, must make the owners corporation register available to that person for inspection between 9 a.m. and 5 p.m. on a weekday and at any other reasonable time, free of charge.
  - (2) The owners corporation may at the request of a person entitled to inspect the owners corporation and on payment of a reasonable fee provide a copy of the register or any part of the register of the owners corporation.
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- (3) A fee determined by the owners corporation for the purposes of this section must not exceed the prescribed maximum fee.

**Division 3—Owners Corporation Certificate**

**9.8 Owners corporation certificate**

- (1) Any person may apply to the owners corporation for an owners corporation certificate.
- (2) The application must be in writing and must be accompanied by the prescribed fee.
- (3) The owners corporation must issue an owners corporation certificate within 14 days after it receives an application and fee under this section.
- (4) An owners corporation certificate must—
- (a) contain the prescribed information relating to the owners corporation and a lot which must include the prescribed information relating to—
    - (i) fees payable in respect of the lot;
    - (ii) fees and charges that are imposed or proposed to be imposed on the lot;
    - (iii) fees and other money owing in respect of the lot;
    - (iv) insurance;
    - (v) repairs or maintenance works;
    - (vi) liabilities and contingent liabilities of the owners corporation including any liabilities or contingent liabilities arising from legal proceedings;
    - (vii) contracts, leases or licences affecting the common property;
    - (viii) services provided to lot owners and occupiers and the public;
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- (ix) notices and orders served on the owners corporation;
  - (x) legal proceedings to which the owners corporation is a party;
  - (xi) the manager;
  - (xii) any appointment of an administrator;  
and
- (b) be accompanied by—
- (i) a copy of the rules of the owners corporation; and
  - (ii) a statement in the prescribed form providing advice and information to prospective purchasers and lot owners;  
and
  - (iii) a copy of all resolutions made at the last annual general meeting of the owners corporation; and
  - (iv) any other documents of a prescribed kind; and
  - (v) a statement advising that further information on prescribed matters can be obtained by inspection of the owners corporation register.
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**PART 10—DISPUTE RESOLUTION**

**Division 1—Complaints and Procedures**

**10.1 Complaints**

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

**10.2 Decision whether to take action in respect of alleged breach**

- (1) This section applies if—
    - (a) a complaint is made under section 10.1; or
    - (b) it otherwise comes to the attention of the owners corporation that a lot owner or an occupier of a lot or a manager may have breached this Act or the regulations or a rule.
  - (2) The owners corporation must decide—
    - (a) to take action under this Part in respect of the alleged breach; or
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- (b) to apply to VCAT for an order requiring the person to rectify the breach; or
  - (c) to take no action in respect of the alleged breach.
- (3) An owners corporation must not take action under this Part or apply to VCAT for an order in relation to an alleged breach unless—
- (a) the dispute resolution process required by the rules has first been followed; and
  - (b) the owners corporation is satisfied that the matter has not been resolved through that process.
- (4) The owners corporation must not take action against a person under this Part or apply to VCAT for an order in respect of an alleged breach unless it believes on reasonable grounds that the person has committed the alleged breach.
- (5) A decision under this Part cannot prevent the carrying out of an obligation under section 3.24 or 3.25 that is necessary to ensure safety or to prevent significant loss or damage.

**10.3 Notice of decision not to take action**

- (1) If an owners corporation decides not to take action under this Part or to apply to VCAT for an order in respect of an alleged breach, it must give notice of the decision to any person who made a complaint under section 10.1 in respect of the alleged breach.
- (2) The notice must set out the reasons for the decision.

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**10.4 Notice to rectify breach**

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

**10.5 What if the person does not rectify the breach?**

- (1) If the person to whom notice is given under section 10.4 does not rectify the breach within 28 days after the date of the notice under section 10.4, the owners corporation may decide—
  - (a) to give the person more time to comply with the notice; or
  - (b) to give the person a final notice; or
  - (c) not to proceed with the action under this Part.
- (2) If the owners corporation decides to give the person more time to comply with the notice under section 10.4, it must give the person notice of that decision setting out the additional time for compliance.

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- (3) If the owners corporation gives a person more time to comply with the notice under section 10.4 and the person does not comply within that time, the owners corporation may decide—
  - (a) to give the person a final notice; or
  - (b) not to proceed with the action under this Part.
- (4) The owners corporation must give notice of its decision under this section to—
  - (a) any person who made a complaint in respect of the alleged breach under section 10.1; and
  - (b) the person to whom the notice was given under section 10.4.

**10.6 Final notice**

- (1) If the owners corporation decides to give a final notice, the notice must—
    - (a) be in writing in the approved form; and
    - (b) state that the person must within 28 days after the date of the notice rectify the breach; and
    - (c) state that if the breach is not rectified within that time, the owners corporation may decide to apply to VCAT for an order requiring the rectification of the breach.
  - (2) If the person who is given a final notice fails to rectify the breach within the required time, the owners corporation may decide—
    - (a) to apply to VCAT for an order requiring the rectification of the breach; or
    - (b) to take no further action in respect of the breach.
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- (3) The owners corporation must give notice of its decision under this section to—
- (a) the person to whom the notice was given under sub-section (1); and
  - (b) any person who made a complaint under section 10.1 in respect of the alleged breach.

Note: See Part 11 for applications to VCAT.

**10.7 How may notice be given?**

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

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

**10.8 Report to annual general meeting**

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

**Division 2—Powers of Director**

**10.9 Making a complaint**

- (1) Any person may complain to the Director about any matter which the Director has power to refer to conciliation under section 10.10.
- (2) A person may complain to the Director in writing.
- (3) The Director may ask a person who has made a complaint to give more information about the complaint within the time fixed by the Director.
- (4) A person who has made a complaint must give his or her name to the Director and such other information relating to his or her identity as the Director may require.

**10.10 Conciliation and mediation**

- (1) The Director may refer to a consumer affairs employee for conciliation or mediation any dispute (which is reasonably likely to be settled) between a current, proposed or former lot owner, mortgagee of a lot, insurer, occupier of a lot, purchaser of a lot and manager of an owners corporation that arises in relation to the operation
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of the owners corporation but not including a dispute under section 103(4) of the **Fair Trading Act 1999**.

- (2) If the whole or any part of a dispute under sub-section (1) falls within the jurisdiction of any prescribed person or body, the Director must refer the dispute, or that part of the dispute, to the person within whose jurisdiction it falls.
- (3) Sub-section (1) applies whether or not a person has made a complaint.
- (4) In this section—

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

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**PART 11—APPLICATIONS TO VCAT**

**Division 1—Owners Corporation Disputes**

**11.1 VCAT may hear and determine disputes**

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

- (a) the operation of an owners corporation; or
- (b) an alleged breach by a lot owner or an occupier of a lot of an obligation imposed on that person by this Act or the regulations or the rules of the owners corporation; or
- (c) the exercise of a function by a manager in respect of the owners corporation.

**11.2 Who may apply to VCAT in relation to a dispute?**

- (1) Any of the following persons may apply to VCAT to resolve an owners corporation dispute—
  - (a) a manager or former manager;
  - (b) a lot owner or former lot owner;
  - (c) the owners corporation;
  - (d) an occupier or former occupier of a lot;
  - (e) a mortgagee of a lot;
  - (f) an insurer under a policy taken out by the owners corporation;
  - (g) the Director.

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- (2) An application to VCAT by the owners corporation for an order requiring a lot owner to pay an amount payable by the lot owner to the owners corporation can only be made if the amount is not paid within 28 days after the final notice is given under section 3.11.

**11.3 VCAT may dismiss application**

VCAT may make an order dismissing or striking out an application by an owners corporation under section 10.2 if it is satisfied that the owners corporation has not complied with section 10.2.

**11.4 What orders can VCAT make?**

- (1) In determining an owners corporation dispute, VCAT may make any order it considers fair including one or more of the following—
- (a) order a party to do or refrain from doing something;
  - (b) an order requiring a party to comply with this Act or the regulations or the rules of the owners corporation;
  - (c) order the payment of a sum of money—
    - (i) found to be owing by one party to another party;
    - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
    - (iii) by way of restitution;
  - (d) an order varying any term of a contract;
  - (e) an order declaring that a term of a contract is, or is not, void;
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- (f) an order declaring—
  - (i) the terms of a delegation; or
  - (ii) the meaning of a rule of the owners corporation;
- (g) if a committee of the owners corporation has not been appointed at or immediately after the first annual general meeting, an order appointing a committee of the owners corporation;
- (h) an order appointing (with the person's consent) or revoking the appointment of—
  - (i) the chairperson of the owners corporation;
  - (ii) the secretary of the owners corporation;
  - (iii) a member of a committee or sub-committee of the owners corporation;
- (i) an order—
  - (i) appointing a person (with the person's consent) as manager of the owners corporation, on specified terms and conditions;
  - (ii) revoking the appointment of a manager of an owners corporation;
  - (iii) imposing conditions or restrictions on the management by a manager of the owners corporation;
- (j) an order in relation to damaged or destroyed buildings or improvements;
- (k) an order as to the payment of insurance money under any policy taken out by an owners corporation;

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- (l) an order requiring an order to be recorded in the owners corporation register, the register of managers or in the register kept under the **Transfer of Land Act 1958**;
  - (m) an order requiring the Registrar to amend the register kept under the **Transfer of Land Act 1958**.
- (2) In awarding damages in the nature of interest, VCAT may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate it thinks appropriate.
  - (3) VCAT may make any interim orders and ancillary orders it thinks fit in relation to an owners corporation dispute.

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

### **11.5 Penalty for breach of rules**

If VCAT determines that a person has failed to comply with a rule of the owners corporation that imposes an obligation that is binding on the person, VCAT may make an order imposing a civil penalty not exceeding 2 penalty units.

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

### **11.6 What can VCAT consider?**

VCAT must in making an order consider the following—

- (a) the conduct of the parties;
- (b) an act or omission or proposed act or omission by a party;

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- (c) the impact of a resolution or proposed resolution on the lot owners as a whole;
- (d) whether a resolution or proposed resolution is oppressive to, unfairly prejudicial to or unfairly discriminates against, a lot owner or lot owners;
- (e) any other matter VCAT thinks relevant.

**11.7 Monetary orders**

- (1) If VCAT makes an order under section 11.4 relating to the payment of money by the owners corporation, it may by order—
  - (a) direct that any money (including expenses and costs) payable must be paid from contributions levied in relation to the lots and in the proportions specified in the order; and
  - (b) direct the owners corporation to levy contributions in accordance with the order; and
  - (c) prohibit the owners corporation from levying a contribution from another party to the dispute.
- (2) If VCAT makes an order under section 11.4 relating to the payment of money by a manager, it may by order prohibit the manager from seeking or enforcing an indemnity from the owners corporation or any other party.

**11.8 Notice to Business Licensing Authority**

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

**Division 2—Exemption Orders**

**11.9 Owners corporation may apply to VCAT for exemption**

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

- (a) compliance with a requirement under this Act to include a lot owner's name in the owners corporation register;
- (b) in the case of a 2-lot subdivision, from compliance with—
  - (i) a requirement under this Act to keep an owners corporation register;
  - (ii) a requirement under this Act to have an annual general meeting;
  - (iii) a requirement under this Act to obtain insurance;
- (c) a requirement under this Act to hold insurance, where an appropriate insurance policy cannot be obtained on reasonable terms;
- (d) a requirement under this Act to have a unanimous resolution;
- (e) a prescribed provision of this Act or the regulations in the prescribed circumstances.

**11.10 VCAT may make exemption order**

- (1) On an application under section 11.9, VCAT may by order exempt the applicant from the requirement for which the exemption is sought.
- (2) An exemption must only be granted on a ground in section 11.9(a) if VCAT is satisfied that exceptional circumstances exist.

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- (3) An exemption on the ground in section 11.9(c) must be granted only for a specified period (not exceeding the prescribed period).
- (4) An exemption must only be granted on the ground in section 11.9(d) if the vote in favour of the resolution is at least 75% of the total votes for all the lots affected by the owners corporation and there are no votes against the resolution.

**Division 3—Restriction of Access to Records**

**11.11 Application to VCAT to restrict access to information**

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

**Division 4—Appointment of Administrator**

**11.12 Application for appointment of administrator**

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

**11.13 Appointment of administrator**

On an application under section 11.12, VCAT may—

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

**11.14 Remuneration of administrator**

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

**11.15 Powers and responsibilities of administrator**

An administrator—

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

**11.16 Administrator to act in good faith**

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

- (a) must act honestly and in good faith; and
  - (b) must exercise due care and diligence.
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Part 12—Registration of Managers

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**PART 12—REGISTRATION OF MANAGERS**

**Division 1—Managers to be Registered**

**12.1 Offence to act as manager without being registered**

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

Penalty: 60 penalty units.

**12.2 Eligibility for registration**

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

- (a) in the case of a natural person, the person is under 18 years of age; or
- (b) the person or, if the person is a body corporate, a director of the person, is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (c) the person is an insolvent under administration or an externally-administered body corporate.

**12.3 Application for registration**

- (1) An application for registration as a manager may be made to the Business Licensing Authority.
  - (2) An application must be—
    - (a) in writing in or to the effect of the form approved by the Business Licensing Authority and must be verified by statutory declaration; and
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Part 12—Registration of Managers

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- (b) accompanied by evidence as to the identity of—
  - (i) the applicant; or
  - (ii) if the applicant is a body corporate, the directors of the applicant—  
by means of a birth certificate, passport (if the passport is current or expired for not more than 2 years), driver licence or any other document in one of the prescribed categories; and
- (c) accompanied by evidence that the applicant is covered by the required professional indemnity insurance; and
- (d) accompanied by the prescribed fee.

**12.4 Further information**

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

**12.5 Registration**

- (1) The Business Licensing Authority must register the applicant under this Part if it is satisfied that the applicant—
  - (a) is eligible to be registered under this Part; and
  - (b) has complied with sections 12.3 and 12.4.
- (2) A registration remains in force until it is cancelled or surrendered.

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Part 12—Registration of Managers

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**12.6 Annual registration fee and statement**

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

**12.7 Extension of time**

- (1) On payment of the prescribed fee (if any), a person may apply to the Business Licensing Authority for an extension of time, or a further extension of time, in which to comply with section 12.6.
- (2) The Business Licensing Authority may grant the application if it is made before the date in relation to which the extension is sought.

**12.8 Failure to comply with section 12.6**

- (1) If a registered manager fails to comply with section 12.6, the Business Licensing Authority must give the manager a written notice stating that unless the manager complies with that section and also pays to the Business Licensing Authority the prescribed late payment or lodgement fee by the
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date specified in the notice, the manager's registration will be cancelled.

- (2) The date specified in the notice must be at least 14 days after the date on which the notice is given to the manager.
- (3) If the manager has not complied with section 12.6 and paid the late payment or lodgement fee by the date specified in the notice, the registration is automatically cancelled.

**12.9 Automatic cancellation of registration**

A person's registration as a manager is automatically cancelled if—

- (a) the person or, if the person is a body corporate, a director of the person, becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (b) the person becomes an insolvent under administration or an externally-administered body corporate.

**12.10 Death, disability etc. of registered person**

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

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- (c) if the person becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**, the guardian or administrator of the person or any person nominated by the guardian or administrator;
  - (d) if the person becomes an externally-administered body corporate, the liquidator, official manager, receiver, receiver and manager or other external administrator.
- (2) If a person authorised to carry on a business applies to the Business Licensing Authority within the 60 day period for permission to carry on the business for a longer period, the person may continue to carry on the business until the Authority makes a decision on the application.
  - (3) The Business Licensing Authority may grant an application if it is satisfied that it is not contrary to the public interest to do so.
  - (4) In granting its permission, the Authority may limit it in any way it thinks appropriate and may impose any conditions it thinks appropriate to ensure the ongoing protection of the public interest.
  - (5) A person who carries on a management business under this section is deemed to be a registered manager for the purposes of this Act.

**12.11 If details given in application or annual statement change**

If, before a decision is made under section 12.5 to register a person as a manager or while a registration is in force, a material change occurs in any of the details provided in the application for registration or in the last statement lodged by a person under section 12.6, the person must give the Business Licensing Authority written details

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of the change within 14 days after the person becomes aware of the change.

Penalty: 25 penalty units.

**12.12 Offence to supply false or misleading information**

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

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

Penalty: 60 penalty units.

**12.13 Cancellation of registration if false information is given**

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

**12.14 Application for review**

- (1) A person whose registration is cancelled under section 12.13 may apply to VCAT for a review of the decision to cancel the registration.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made; or

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

**Division 2—Register of Managers**

**12.15 Register of managers**

The Licensing Registrar must keep a register of managers open for public inspection in the form determined by the Licensing Registrar.

**12.16 Purposes of register of managers**

The purposes of keeping the register of managers are—

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

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**12.17 What must the register of managers contain?**

The register of managers must contain details of the following in relation to each person registered as a manager under this Part—

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

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- (i) any orders of VCAT under this Act relating to the person as a manager, including orders for appointment or removal of the person as manager of which the Licensing Registrar has notice;
- (j) any undertakings given to the Director under this Act or the **Fair Trading Act 1999**;
- (k) the date of grant, surrender or cancellation of registration;
- (l) any other prescribed information.

**12.18 Inspection of register of managers**

A person in accordance with the regulations (if any) and on payment of the prescribed fee (if any) may—

- (a) inspect the register of managers; and
- (b) obtain copies of, or extracts from, the register of managers.

**12.19 Removal of information from register of managers**

Subject to the **Public Records Act 1973**, the Licensing Registrar may, if in his or her opinion it is no longer necessary or desirable to retain it, remove any information from the register of managers 12 years after the information was added to the register.

**12.20 Duty of Licensing Registrar**

In the exercise and performance of his or her duties under this Part the Licensing Registrar must act on any information which appears to the Licensing Registrar sufficient in each case.

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**PART 13—GENERAL**

**13.1 Approved forms**

- (1) The Director may from time to time approve forms for the purposes of this Act.
- (2) The Director must publish a copy of each approved form on the Internet site for the Department.

**13.2 Application of Fair Trading Act 1999**

- (1) Part 10 of the **Fair Trading Act 1999** (except sections 120, 121 and 130) extends and applies (with any necessary modifications) to this Act as if any reference in that Part to the **Fair Trading Act 1999** were a reference to this Act.
  - (2) Sections 106HA, 143 and 144 and Division 2 of Part 11 (except sections 151A, 151B, 151C, 153 and 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.
  - (3) For the purposes of sub-section (2), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
    - (a) proceedings for an offence against a provision of this Act (except an offence applied by sub-section (1)); or
    - (b) proceedings on an application for an injunction under section 149, 149A or 150 of the **Fair Trading Act 1999** (as applied by sub-section (2)) against a person alleged to have contravened a provision of this Act (except an offence applied by sub-section (1)); or
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- (c) proceedings on an application for an order under section 158, or for damages under section 159 of the **Fair Trading Act 1999** (as applied by sub-section (2)).

**13.3 Certain provisions of contracts void**

A provision of a contract is void to the extent that it purports to exclude, modify or restrict the operation of this Act.

**13.4 Who may bring proceedings for offences?**

- (1) Proceedings for an offence against this Act or the regulations may only be brought by—
  - (a) the Director; or
  - (b) a person authorised by the Director for the purposes of this section.
- (2) In proceedings for an offence against this Act or the regulations it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.

**13.5 Regulation-making powers**

The Governor in Council may make regulations for or with respect to—

- (a) regulating and requiring the taking out of insurance by an owners corporation and lot owners of an owners corporation including but not limited to—
    - (i) prescribing terms to be contained in insurance policies in relation to lots or common property; and
    - (ii) requiring the noting of mortgagees' interests on insurance policies taken out by owners corporations; and
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- (iii) prescribing the manner of indexing the sum insured for any particular class of insurance; and
  - (iv) prescribing approved insurers;
  - (b) requiring documents or information required to be kept under this Act to be lodged with the Registrar of Titles;
  - (c) requiring records or registers to be kept and prescribing the content and manner of keeping records or registers under this Act or the regulations;
  - (d) prescribing model rules for the purposes of this Act;
  - (e) providing for any other matter which is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.
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**PART 14—AMENDMENTS TO SUBDIVISION ACT 1988**

**14.1 Definitions**

(1) In section 3(1) of the **Subdivision Act 1988**, the definitions of "body corporate", "land affected by a body corporate", "limited body corporate", "lot entitlement", "lot liability" and "unlimited body corporate" are **repealed**.

(2) In section 3(1) of the **Subdivision Act 1988**, **insert** the following definitions—

**"land affected by an owners corporation"**

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

**"limited owners corporation"** has the meaning set out in section 27C;

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

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

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

See:  
Act No.  
53/1988.  
Reprint No. 5  
as at  
1 January  
1999  
and  
amending  
Act Nos  
28/2000,  
74/2000,  
44/2001,  
47/2004 and  
81/2004.  
LawToday:  
[www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au)

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**"owners corporation"** means a body corporate that is incorporated by registration of—

- (a) a plan of subdivision; or
- (b) a plan of strata subdivision; or
- (c) a plan of cluster subdivision;

**"unlimited owners corporation"** has the meaning set out in section 27B;.

- (3) In section 3(1) of the **Subdivision Act 1988**, in the definition of "plan" for "section 24A, 32, 32B or 37" **substitute** "section 24A, Division 3 of Part 5, section 32B or 37".

#### **14.2 Application of Act**

In section 4(1) of the **Subdivision Act 1988**—

- (a) in paragraph (c) for "section 32 or 36(2)(b)" **substitute** "Division 3 of Part 5 or section 36(2)(b)";
- (b) for paragraphs (e) and (f) **substitute**—
  - "(e) an owners corporation; and
  - (f) plans under sections 24A, 32B and 37 and Division 3 of Part 5; and".

#### **14.3 Council role**

- (1) In section 6(1)(i) of the **Subdivision Act 1988**—
    - (a) for "members of a body corporate under section 32" **substitute** "lot owners who are members of the owners corporation under Division 3 of Part 5";
    - (b) after "court" **insert** "or tribunal".
  - (2) In section 6(3) of the **Subdivision Act 1988** after "court" **insert** "or tribunal".
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**14.4 Easements and other rights**

For section 12(2)(a)(iii) of the **Subdivision Act 1988 substitute—**

"(iii) any land affected by an owners corporation;  
and".

**14.5 Registration of plan**

- (1) In section 22(1)(f) of the **Subdivision Act 1988** for "body corporate" **substitute** "owners corporation".
- (2) In section 24(2)(g) of the **Subdivision Act 1988** for "section 23, 24A, 32, 32B, 35 or 37" **substitute** "section 23, 24A, 32B, 35 or 37 or Division 3 of Part 5".

**14.6 New Part 5 substituted**

For Part 5 of the **Subdivision Act 1988 substitute—**

**'PART 5—SUBDIVISIONS WITH OWNERS  
CORPORATIONS**

**Division 1—Creation of Owners Corporation**

**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.

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- (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.

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

- (1) Subject to sub-section (2), a plan which contains common property must provide for the creation of one or more owners corporations.
- (2) A plan which contains only 2 lots and common property may, but is not required to, provide for the creation of one or more owners corporations.

**27B. What is an unlimited owners corporation?**

- (1) An unlimited owners corporation is an owners corporation that is not a limited owners corporation.
- (2) The plan must specify the purpose of the unlimited owners corporation.

**27C. What is a limited owners corporation?**

- (1) A limited owners corporation is an owners corporation specified on a plan as a limited owners corporation.
  - (2) The plan must specify the purpose of a limited owners corporation.
  - (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.
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- (4) The plan may specify functions or obligations of the limited owners corporation under the **Owners Corporation 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 the plan specifies functions or obligations as provided for in sub-section (4), then despite anything to the contrary in the **Owners Corporation Act 2006**—
  - (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 plan may require the unlimited owners corporation to issue owners corporation certificates instead of the limited owners corporation.

**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

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

**27E. Creation of rules**

- (1) A plan providing for the creation of an owners corporation or for the merger of owners corporations may be accompanied by proposed rules for the owners corporation.
- (2) The rules must only provide for matters for which rules can be made under the **Owners Corporation Act 2006**.
- (3) On the registration of the plan, the rules must be taken to be rules made by the owners corporation under the **Owners Corporation Act 2006** and may be revoked or amended accordingly.

**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—
  - (a) specify details of lot entitlement and lot liability; and
  - (b) specify the basis for the allocation of lot entitlement and lot liability; and
  - (c) contain the prescribed information.
- (2) The prescribed information which a plan must contain under sub-section (1) is not limited to information about the owners corporation or lot entitlement or lot liability.

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**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 Corporation 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.

**27H. Registrar to record information**

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.

**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.

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- (3) An owners corporation and its members have the constitution, duties, functions, powers, rights and liabilities specified in—
- (a) the **Owners Corporation Act 2006** and the regulations under that Act; and
  - (b) this Act and the regulations under this Act; and
  - (c) any other law; and
  - (d) the rules of the owners corporation.

**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 Corporation 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. 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.

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**Division 2—Common Property**

**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) 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.
- (2) In sub-section (1), "**relevant unlimited owners corporation**" means the unlimited owners corporation affecting the lots affected by the limited owners corporation.

**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 unlimited 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.

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**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.
- (3) The Registrar may only record on the folio of the Register for common property anything affecting the common property only and not the lots.
- (4) A recording made on the folio of the Register for a lot operates in relation to the owner's interest in the common property as if it were also a recording made in relation to that interest on the folio for the common property.

**Division 3—Alteration of a Subdivision**

**32. Powers of owners corporation**

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

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- (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;
- (c) alter the boundaries of any 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 it and it owns no land; or
  - (ii) it disposes under this sub-section of all its common property and all the land that it owns; or
  - (iii) the land affected by the owners corporation has only 2 lots, with or without common property;

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

**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.

**32AB. No power to compulsorily acquire**

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

**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.

**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.

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- (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 sub-section (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 sub-section (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.

**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 section 33(2) and (3).

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**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.

**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.

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**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.

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**32AI. Consolidation, subdivision or alteration**

- (1) The owner or owners of a lot or lots affected by an owners corporation on a registered plan may, without obtaining a resolution of the owners corporation, proceed under this sub-section to consolidate, subdivide or alter the lot or lots owned, if the consolidation, subdivision or alteration—
    - (a) does not alter the boundaries of 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 a substantial amount of land to the land affected by the owners corporation.
  - (2) If an owner proceeds under sub-section (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.
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**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.

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

Unless this section 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.

**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
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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 sub-section (1) unless satisfied that the owners corporation on the registered plan has no accrued or accruing debts.

**Division 4—General Provisions Relating to  
Plans**

**32A. Total consolidation or re-subdivision**

- (1) The owners of all the land in a plan that includes land affected by one or more owners corporations may submit for certification and lodge for registration a plan consolidating or re-subdividing all that land.
  - (2) The Registrar must not register the plan unless satisfied that each owners corporation on the existing plan has no accrued or accruing debts.
  - (3) On the registration of the plan—
    - (a) each owners corporation on the previous registered plan is dissolved;  
and
    - (b) the land affected by each owners corporation on the previous registered plan 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, freed from any caveat, mortgage, charge, lease, sub-lease and from any easement under section 12.
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**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.

**33. How can lot entitlement and liability be altered?**

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

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**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**

**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.

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**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.

**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.
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**34D. Applications relating to plans**

- (1) A member of the owners corporation, an owners corporation, an administrator of 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 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 sub-section (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 sub-section (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
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- (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.
- (4) For the purposes of sections 32 and 33, an order made on an application under sub-section (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 sub-section (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).
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- (6) Subject to this section, the Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.

**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.

**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**

**34G. Winding up of an owners corporation**

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

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- (2) The 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 Tribunal may make any directions or impose any conditions or vary, modify or cancel the order as it thinks fit.

**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 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.

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- (3) An unlimited owners corporation is dissolved when the Registrar amends or cancels the plan under sub-section (1) and, subject to the Tribunal order, 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 sub-section (2).
- (5) After amending or cancelling the plan, the Registrar must notify the Council.'

**14.7 References to body corporate**

In the **Subdivision Act 1988**—

- (a) in section 35(2)—
    - (i) for "a body corporate" **substitute** "an owners corporation";
    - (ii) for "the body corporate" **substitute** "the owners corporation";
  - (b) in section 35(6)(h) for "a body corporate" (wherever occurring) **substitute** "an owners corporation";
  - (c) in section 37(3)(c)(ii) for "a body corporate" **substitute** "an owners corporation";
  - (d) in section 37(3)(c)(iv)(A) for "body corporate" **substitute** "owners corporation";
  - (e) in section 37(4) for "a body corporate" **substitute** "an owners corporation";
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- (f) in section 37(5)—
  - (i) for "a body corporate" **substitute** "an owners corporation";
  - (ii) for "the body corporate" **substitute** "the owners corporation";
- (g) in section 37(8)(c) for "body corporate" **substitute** "owners corporation";
- (h) in sections 44(5A) and 44(5C) for "a body corporate" **substitute** "an owners corporation".

**14.8 Repeal of section 38**

Section 38 of the **Subdivision Act 1988** is **repealed**.

**14.9 Other disputes arising under Subdivision Act 1988**

- (1) **Insert** the following heading to section 39 of the **Subdivision Act 1988**—  
**"General disputes arising under this Act"**.
- (2) In section 39(2)(a) of the **Subdivision Act 1988** for "section 38" **substitute** "Division 5 of Part 5".

**14.10 Regulations**

In section 43 of the **Subdivision Act 1988**—

- (a) sub-section (1)(h) is **repealed**;
  - (b) sub-section (1)(i) is **repealed**;
  - (c) sub-section (1)(ia) is **repealed**.
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Part 15—Amendment of Other Acts

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**PART 15—AMENDMENT OF OTHER ACTS**

**15.1 Amendment of Domestic Building Contracts Act 1995**

In section 54(1) of the **Domestic Building Contracts Act 1995**—

- (a) in paragraph (c) for "building work." **substitute** "building work; or";
- (b) after paragraph (c) **insert**—
  - "(d) between a lot owner or an owners corporation and an initial owner (within the meaning of section 4.3 of the **Owners Corporation Act 2006**) of land in a plan of subdivision in relation to an obligation imposed on the initial owner under section 4.3(2) of the **Owners Corporation Act 2006**."

See:  
Act No.  
91/1995.  
Reprint No. 5  
as at  
1 July 2002  
and  
amending  
Act Nos  
30/2003,  
35/2004,  
37/2004,  
103/2004,  
108/2004,  
18/2005 and  
52/2005  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

**15.2 Amendment of Limitation of Actions Act 1958**

After section 7B of the **Limitation of Actions Act 1958** **insert**—

**"7C. Adverse possession of common property**

- (1) Despite any rule of law or provision made by or under this or any other Act but without limiting section 7, the right, title and interest of an owners corporation, or an owner of a lot affected by the owners corporation, in land which is common property affected by the owners corporation is not affected by reason only of any possession of that land adverse to the owners corporation or the lot owner by another owner of a lot affected by the owners corporation, irrespective of the period of that possession.

See:  
Act No.  
6295.  
Reprint No. 8  
as at  
30 June 2003  
and  
amending  
Act Nos  
8/2004,  
76/2004 and  
75/2005.  
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- (2) Words and expressions used in this section have the same meanings as they have in the **Owners Corporation Act 2006**."

**15.3 Amendment of Sale of Land Act 1962**

- (1) Section 32(2)(h) of the **Sale of Land Act 1962** is **repealed**.

- (2) After section 32(3) of the **Sale of Land Act 1962** **insert—**

- "(3A) If the land is affected by an owners corporation within the meaning of the **Subdivision Act 1988**, the vendor must attach to the statement required by subsection (1)(a) and to the contract—
- (a) a copy of the current owners corporation certificate issued in respect of the land under the **Owners Corporation Act 2006**; and
  - (b) a copy of the documents required to accompany the owners corporation certificate under section 9.8(4)(b) of the **Owners Corporation Act 2006**."

See:  
Act No.  
6975.  
Reprint No. 12  
as at  
1 February  
2004  
and  
amending  
Act Nos  
92/1990,  
103/2004,  
10/2005 and  
18/2005.  
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Part 15—Amendment of Other Acts

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**15.4 Amendment of Victorian Civil and Administrative Tribunal Act 1998**

In Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, before Part 16 **insert—**

**"PART 15AB—OWNERS CORPORATION ACT 2006**

**51AD. Any member of Tribunal may make a declaration**

Despite anything to the contrary in section 124, a declaration may be made in a proceeding under the **Owners Corporation Act 2006** by the Tribunal constituted by any member."

See:  
Act No.  
53/1998.  
Reprint No. 3  
as at  
1 July 2003  
and  
amending  
Act Nos  
18/2003,  
30/2003,  
75/2003,  
10/2004,  
12/2004 (as  
amended by  
No. 39/2004),  
53/2004,  
99/2004,  
108/2004,  
16/2005,  
18/2005,  
49/2005,  
57/2005,  
61/2005,  
71/2005,  
88/2005,  
97/2005 and  
100/2005.  
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**SCHEDULE**

**SCHEDULE 1**

Section 8.1(2)

**RULES OF OWNERS CORPORATION**

**1. Health, safety and security**

- 1.1 Health, safety and security of lot owners, occupiers of lots and invitees.
- 1.2 Safety of children, including their exclusion from areas that may be unsafe for them or restricting activities that may be unsafe.
- 1.3 Storage of flammable liquids and other dangerous substances and materials.
- 1.4 Waste disposal.

**2. Committees and sub-committees**

- 2.1 Functions, powers and reporting of committees and sub-committees.
- 2.2 Appointment of treasurer.
- 2.3 Functions of the chairperson, secretary and treasurer.
- 2.4 Financial controls for committees, sub-committees and delegates.

**3. Management and administration**

- 3.1 Management and administration of common property and services.
- 3.2 Functions of manager.
- 3.3 Repair and maintenance of common property and services.
- 3.4 Metering of services and apportioning of costs of services.

**4. Use of common property**

- 4.1 Use of common property.
  - 4.2 Use of equipment, services and amenities on common property.
  - 4.3 Vehicles and parking on common property.
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- 4.4 Drying of laundry on common property or external or visible areas of lots.
- 4.5 Damage to common property (but not preventing the installation of insect screens or safety lock devices).
- 4.6 Deposit of rubbish and other material on common property.

**5. Lots**

- 5.1 Change of use of lots.
- 5.2 External appearance of lots.
- 5.3 Requiring notice to the owners corporation of renovations to lots.
- 5.4 Times within which works on lots can be carried out.

**6. Design**

Design, construction and landscaping.

**7. Behaviour of persons**

- 6.1 Behaviour of owners, occupiers and invitees on common property.
- 6.2 Noise and other nuisance control.

**8. Dispute resolution**

Dispute resolution, including internal grievance procedures, hearing procedures and communication procedures.

**9. Notices and documents**

- 9.1 Notices, noticeboards and advertising.
- 9.2 Fees for provision of copies of rules, records and owners corporation register.
- 9.3 Notices about fees and charges.

**10. Common seal**

The use of the common seal of the owners corporation.

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**ENDNOTES**

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