

Owners Corporations Bill

Introduction Print

EXPLANATORY MEMORANDUM

General

The Bill creates a legal framework for the governance of bodies corporate (which will be now known as "owners corporations") created under the **Subdivision Act 1988**. The Bill facilitates the regulation of these separate legal entities which are charged with managing common property where there are multiple owners of the common property.

The Bill will reform the regulatory scheme for the management of bodies corporate which currently exists under the **Subdivision Act 1988** and the **Subdivision (Body Corporate) Regulations 2001**. Among the issues addressed by the Bill are—

- Clarification of roles and responsibilities of owners corporations, committees of management, managers, lot owners and occupiers.
- Improved protection for body corporate funds.
- Improved avenues for dispute resolution.
- Improved governance arrangements.
- Enhanced regulation of disclosure of information.
- Improved enforcement.

The Bill provides greater duties, functions, powers and responsibilities for owners corporations to manage common property than are provided by the current **Subdivision (Body Corporate) Regulations 2001**. It also sets out principles of conduct and standards of care to apply to managers, developers ("initial owners") and committee members. A new register of managers is established, to apply to professional managers, which will enable lot owners and members of the public to have access to information about registered managers. This register will also allow Consumer Affairs Victoria to advise managers of changes to the legislation, orders and undertakings to promote compliance, and professional indemnity insurance.

The Bill provides a framework and a structure that enables various or tiered requirements for the operations of bodies corporate. These include the introduction of a category of "prescribed" or larger owners corporations, which will require higher standards of financial reporting and be subject to maintenance obligations.

The Bill will also apply to bodies corporate created under other earlier legislation relating to the subdivision of land and buildings.

Clause Notes

PART 1—INTRODUCTORY

- Clause 1 sets out the main purposes of the Bill.
- Clause 2 provides for the commencement of the Bill. The Bill comes into operation on a day to be proclaimed. However, the Bill will come into operation on 31 December 2007 if not proclaimed before then.
- Clause 3 sets out the definitions of terms used in the Bill, and in particular, defines key terms such as "building", "common property", "land affected by an owners corporation", "lot affected by an owners corporation", "lot entitlement", "lot liability", "lot owner", "owners corporation" and "unlimited owners corporation".

PART 2—FUNCTIONS AND POWERS OF OWNERS CORPORATIONS

Division 1—Functions and Powers of Owners Corporation

- Clause 4 sets out the functions of an owners corporation.
- Clause 5 requires an owners corporation to act honestly and in good faith and to exercise due care and diligence in carrying out its functions and powers.
- Clause 6 sets out the powers of an owners corporation.
- Clause 7 exempts owners corporations for 2-lot subdivisions from compliance with the requirement to keep records under Divisions 1 and 2 of Part 9, the complaints procedure in Division 1 of Part 10, requirements as to meetings and ballots under Part 4, requirements as to maintenance plans, maintenance funds and accounts and audit and fee notice provisions in Part 3, and certain provisions relating to insurance, unanimous, special or interim special resolutions.

- Clause 8 provides that clauses relating to repairs and maintenance do not apply to an owners corporation which is limited to the common property.
- Clause 9 enables the owners corporation to appoint or employ persons to assist in carrying out its functions.
- Clause 10 enables an owners corporation to execute in its own name documents and other things necessary to carry out its functions, powers, rights and obligations.
- Clause 11 enables an owners corporation to delegate any power or function that it has, other than a power or function requiring a unanimous or special resolution or the power of delegation itself, and sets out to whom the delegation may be made.

Division 2—Powers Relating to Services

- Clause 12 provides for an owners corporation by special resolution to provide a service to lot owners or occupiers or the public or to enter into agreements for these services. A lot owner or occupier to whom a service has been provided may be required to pay the cost of it.
- Clause 13 prohibits an owners corporation from carrying on a business, but allows the owners corporation to participate in or be a member of another body that carries on a business.

Division 3—Powers Relating to Property

- Clause 14 provides that the owners corporation may, by special resolution, lease or license the whole or part of the common property.
- Clause 15 provides that the owners corporation may, by special resolution, obtain a lease or licence over land.
- Clause 16 provides that an owners corporation may acquire or hold personal property for, lease personal property to, or obtain a licence for personal property for the use of, lot owners or other persons. The owners corporation may also dispose of personal property.
- Clause 17 prohibits an owners corporation from mortgaging or otherwise charging common property.

Division 4—Power to Bring Legal Proceedings

- Clause 18 provides that an owners corporation must not bring legal proceedings unless authorised by special resolution. However, a special resolution is not required for an application to VCAT under Part 11 to recover fees and other money or to enforce the owners corporation rules.

Division 5—The Common Seal

- Clause 19 provides that the common seal of an owners corporation must include the name of the owners corporation, and must be kept as directed by the owners corporation.
- Clause 20 provides that the common seal must not be used on a document unless its use has been authorised by a resolution of the owners corporation. This resolution must be recorded in the minutes of the general meeting or, if the owners corporation keeps a common seal register, in the register.
- Clause 21 requires the use of the common seal to be witnessed by at least two persons who own separate lots and are members of the owners corporation. If there is only one lot owner, the use of the seal must be witnessed by that lot owner. Each witness must sign their name, print their full name and address, and state that they are a lot owner. If a lot owner is a corporation, the witness can be a director of the corporation.
- Clause 22 requires all courts to take judicial notice of the common seal of the owners corporation on a document, and to presume that the seal was properly used unless the contrary is proved.

PART 3—FINANCIAL MANAGEMENT

Division 1—Financial Powers

- Clause 23 enables an owners corporation to set annual fees and specifies what these fees may cover, including fees relating to an approved maintenance plan. Fees must be based on lot liability. The owners corporation may determine the times for payment of fees.
- Clause 24 enables an owners corporation to levy special fees and charges to cover extraordinary items of expenditure. Fees must be based on lot liability. The owners corporation may determine the times for payment of the special fees and charges.

A special resolution is required if the amount of the special fees and charges is more than twice the total amount of current annual fees set under clause 23, unless the fees are levied in relation to repairs or maintenance where immediate expenditure is or was necessary to ensure safety or prevent significant loss or damage to persons or property.

- Clause 25 allows an owners corporation to borrow money and repay borrowed money. An ordinary resolution is needed if the amount borrowed does not exceed the amount of the current annual fees set under clause 23, and a special resolution is required otherwise.
- Clause 26 allows an owners corporation to invest money.
- Clause 27 allows an owners corporation to have bank accounts, and requires that each bank account must be established in the name of the owners corporation. All fees levied by an owners corporation must be paid into a bank account of the owners corporation or its manager.
- Clause 28 provides that the owners and any purchaser in possession of, and entitled to receive rents and profits from, a lot are liable to pay any outstanding monies owing to the owners corporation in respect of that lot. A lot owner's liability to pay or contribute must not exceed the lot owner's lot liability, except where repairs, maintenance or other works are undertaken wholly or substantially for the benefit of some or one, but not all, of the lots affected by the owners corporation.
- Clause 29 allows an owners corporation to charge interest on any amount payable by a lot owner that remains outstanding after the due date for payment, up to the maximum rate of interest payable under the **Penalty Interest Rates Act 1983**.
- Clause 30 enables an owners corporation to recover any money owed to it in any court of competent jurisdiction, subject to the application of the specific procedure in the fee notice provisions for money owed by lot owners.
- Clause 31 requires the owners corporation to give notice to a lot owner in the approved form ("the fee notice") of any fees and charges due and payable by the lot owner to the owners corporation. It also sets out what information must be provided in the fee notice.

Clause 32 provides that the owners corporation may send a final notice in the approved form to the lot owner if money owing is not paid within 28 days of the fee notice. It sets out what the final notice must state, including the details of any interest payable in respect of the overdue fees and charges, and the intention of the owners corporation to take action under Part 11 to recover the amount due if the overdue fees, charges and interest owing are not paid within 28 days.

Division 2—Accounts and Audit

Clause 33 requires an owners corporation to keep proper books of account that cover all its income, expenditure, assets and liabilities, and that will enable true and fair view financial statements to be prepared.

An owners corporation that has an approved maintenance plan must keep separate accounts for its maintenance funds. Clause 122(2) provides that a manager holds all money held on behalf of an owners corporation on trust for the owners corporation, and must account separately for the money held for each owners corporation.

Clause 34 requires an owner corporation to prepare annual financial statements for presentation at its annual general meeting. A prescribed owners corporation must prepare its financial statements according to the standards required by the regulations.

Clause 35 provides that an owners corporation may resolve at its annual general meeting that its financial statements are to be audited after the end of the financial year, and sets out who is qualified to perform such audits.

Sub-clause (2) provides that financial statements of a prescribed owners corporation must be audited each financial year and sets out who is qualified to perform such audits. The owners corporation may apply for an exemption from this requirement under sub-clause (6).

Sub-clause (4) prohibits a person with a personal or financial interest in the owners corporation from being appointed as auditor.

Sub-clause (5) enables the Director to grant approval to a suitably qualified person or a class of persons to audit accounts.

Division 3—Maintenance Plan

- Clause 36 requires a prescribed owners corporation to prepare a maintenance plan for the property and enables other owners corporations to prepare a maintenance plan.
- Clause 37 requires a maintenance plan to set out the major capital items anticipated to require repair and replacement within the next 10 years, their present condition or state of repair, when they will need to be repaired or replaced, the estimated cost of their repair and replacement and their expected life once repaired or replaced.
- "Major capital item" is defined to include a lift, an air conditioning plant, a heating plant or an item of a prescribed class.
- Clause 38 provides that a maintenance plan does not have effect unless approved by the owners corporation, and that the owners corporation may set conditions for the payment of money out of the maintenance fund.
- Clause 39 requires the owners corporation to report to the annual general meeting about the implementation of its approved maintenance plan.

Division 4—Maintenance Fund

- Clause 40 requires an owners corporation with an approved maintenance plan to establish a maintenance fund in its name.
- Clause 41 provides that the maintenance fund must be used for implementing the owners corporation's approved maintenance plan.
- Clause 42 specifies what must be paid into a maintenance fund by an owners corporation.
- Clause 43 enables the payment of money out of the maintenance fund at any time in accordance with the approved maintenance plan, subject to any conditions in the regulations and any ordinary resolution.
- Clause 44 enables payments out of the maintenance fund if the owners corporation approves the payment by special resolution.

Clause 45 provides for extraordinary payments from the maintenance fund for urgent matters, and includes a list of matters which would qualify as urgent for the purposes of this clause.

Expenditure for an urgent matter must not exceed what is necessary, or any limitation imposed by the owners corporation, and the owners corporation must report to lot owners on any expenditure for an urgent matter as soon as possible after the expenditure is made.

Division 5—Asset Management

Clause 46 requires an owners corporation to repair and maintain the common property and the chattels, fixtures, fittings and services related to the common property or its enjoyment.

Clause 47 requires an owners corporation to repair and maintain a service in or relating to a lot that is for the benefit of more than one lot and the common property.

Sub-clause (2) enables an owners corporation, at the request and expense of a lot owner, to repair and maintain a service in or relating to a lot if it is impracticable for the lot owner to repair or maintain the service. "Service" is defined to include a service for which an easement or right is implied over the land affected by the owners corporation, or for the benefit of each lot and any common property by section 12(2) of the **Subdivision Act 1988**.

Clause 48 provides that an owners corporation may serve a notice on a lot owner requiring the lot owner to carry out repairs, maintenance or other works to their lot which are necessary due to the adverse affect on the outward appearance or state of repair of the lot, or if the use and enjoyment of other lots or common property is adversely affected.

A lot owner served with the notice must carry out the repairs, maintenance or other works within 28 days of the service of the notice. If the lot owner does not comply within this time, the owners corporation may carry out the necessary repairs, maintenance or other works.

Clause 49 enables an owners corporation to recover as a debt from a lot owner the cost of repairs, maintenance or other work carried out under clause 48(3). If the work is undertaken wholly or substantially for the benefit of some lots only, the relevant lot owners must pay on the basis that the lot owner that benefits pays more.

- Clause 50 provides that an owners corporation may authorise a person to enter a lot or a building on a lot to carry out repairs, maintenance or other works in accordance with clauses 47(1), 47(2) or 48(3).
- Clause 51 requires an owners corporation to give at least 7 days notice in writing of its intention to enter a lot unless the occupier agrees to a lesser time or there is an emergency. However, 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**.
The clause also sets out what an "emergency" may include.
- Clause 52 provides that an owners corporation must not make a significant alteration to the use or appearance of the common property unless it is approved by a special resolution of the owners corporation, permitted by the approved maintenance plan, agreed to under clause 53 or it is necessary to ensure safety or to prevent significant loss or damage.
- Clause 53 enables an owners corporation by special resolution to approve the carrying out of upgrading works for the common property and the levying of fees on lot owners for that purpose.
The clause also provides a definition of "upgrading works".

Division 6—Insurance

- Clause 54 defines "building" for the purposes of Division 6 (as opposed to the general definition in clause 3) to include any improvements and fixtures, but to exclude carpet and temporary wall and ceiling coverings or fixtures removable by a lessee at the end of a lease.
- Clause 55 clarifies that a lot owner's right to take out an insurance policy relating to destruction of or damage to the lot owner's lot or interest in the common property is not limited by this Bill or the regulations.
- Clause 56 provides that an owners corporation has an insurable interest in the land affected by the owners corporation.
- Clause 57 provides that 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 must be disregarded.

- Clause 58 prohibits a mortgagee of a lot affected by the owners corporation from requiring the lot owner to take out an insurance policy over the lot and the owner's interest in the common property if the owners corporation has taken out an insurance policy over the land affected by the owners corporation. The only exception to this is if the mortgagee's interest is noted on the owners corporation's policy, and the sum insured is less than the sum owing under the mortgage and the extra insurance covers the difference. The clause sets out how payment will be allocated if this exception applies and the lot owner's property is not to be reinstated, with the mortgagee having priority in relation to any insurance payment up to the amount of the mortgage, and any surplus being paid to the lot owner.
- Clause 59 requires an owners corporation to take out reinstatement and replacement insurance for all buildings on the common property in accordance with Part 3, Division 6. The owners corporation must ensure that the reinstatement and replacement insurance includes certain listed provisions relating to the interests of mortgagees and the responsibility of the owners corporation for any breach.
- Clause 60 requires an owners corporation to take out public liability insurance for the common property. It further requires the owners corporation to ensure that the public liability insurance has a minimum limit of liability of \$10 million or other prescribed amount.
- Clause 61 requires an owners corporation to take out reinstatement and replacement insurance and public liability insurance for all lots if a building is located above or below common property, a reserve or a lot. This requirement does not apply to a single storey building, such as those on plans which define space above and below the lot as common property.
- Clause 62 enables the owners corporation by ordinary resolution to insure any additional insurable interest in the land affected by the owners corporation and relating to the performance of its functions.
- Clause 63 enables an owners corporation by unanimous resolution to resolve that each lot owner must arrange for the lot owner's own insurance if there is no common property.
- Clause 64 states that Division 6 of Part 3 does not apply to an owners corporation if the land affected by it is affected by another owners corporation that has the required insurance (for example, in the case of a limited and unlimited owners corporation).

Clause 65 requires a prescribed owners corporation to obtain a valuation of all buildings that it is liable to insure. The valuation must be obtained at least every 5 years, and the valuer's report must be presented at the next general meeting.

PART 4—MEETINGS AND DECISIONS OF OWNERS CORPORATION

Division 1—First Meeting of Owners Corporation

Clause 66 requires the applicant for registration of a plan of subdivision to create an owners corporation to convene the first meeting of the owners corporation within 6 months of the plan's registration.

Clause 67 lists the documents which the applicant for registration must provide at the first meeting of the owners corporation.

Clause 68 requires an initial owner (meaning an applicant for registration) having majority control for five years after registration of the plan to—

- act honestly and in good faith and with due care and diligence in the interests of the owners corporation in exercising any rights under the Bill; and
- enforce any domestic building contract within the meaning of the **Domestic Building Contracts Act 1995** entered into by the initial owner to the extent that any breach relates to the common property and the initial owner is aware or ought reasonably be aware of it.

Division 2—Annual General Meeting

Clause 69 requires an owners corporation to have an annual general meeting if it receives or pays out money in any financial year. The time between annual general meetings must not exceed 15 months.

Clause 70 states that the first meeting of an owners corporation convened under clause 66 is the first annual general meeting. It also sets out who may convene all other annual general meetings.

Clause 71 requires the person convening an annual general meeting to prepare an agenda for the meeting, and sets out the matters which must be dealt with at the annual general meeting.

Clause 72 requires the person convening an annual general meeting to give notice in writing of the meeting to each lot owner at least 14 days before the meeting. It also sets out the other matters which must be included in the notice.

Division 3—Special General Meetings

Clause 73 defines a special meeting to be a meeting of an owners corporation other than an annual general meeting.

Clause 74 sets out who may convene a special general meeting, and in what circumstances.

Clause 75 requires the person convening a special general meeting to prepare an agenda setting out matters to be dealt with. If the person convening the meeting has been nominated by lot owners under clauses 74(c) or 74(d)(ii), which allows a nominee of lot owners holding 25% of the lot entitlements to convene the meeting, the agenda must accord with that approved by those nominating the person.

Clause 76 requires the person convening a special general meeting to give notice in writing of the meeting to each lot owner at least 14 days before the meeting, and sets out the matters which must be included in the notice.

Division 4—Procedure at General Meetings

Clause 77 defines a quorum for a general meeting to be at least 50% of the total votes or at least 50% of the total entitlement.

Clause 78 sets out a procedure for interim resolutions to be made at a general meeting in relation to matters which can be determined by an ordinary resolution if there is no quorum. Notice of the interim resolution must be forwarded to all lot owners within 14 days of the meeting.

An interim resolution will become a resolution of the owners corporation 29 days from the date it is made, unless notice of a special general meeting is given within 29 days. If notice is given, the interim resolution can only be acted upon if it is confirmed at a meeting held within 28 days or if no meeting is held during the 28 day period.

Clause 79 provides that the chairperson of the owners corporation chairs a general meeting. If the chairperson is not present, the lot owners present may elect a lot owner or the manager to chair the meeting.

- Clause 80 provides that a lot owner may participate in a general meeting in person, by teleconferencing in accordance with the regulations, by proxy or in another manner as provided in the regulations.
- Clause 81 requires the owners corporation to arrange for minutes to be kept of general meetings, and sets out the minimum information to be recorded for each general meeting.
- Clause 82 enables an owners corporation by ordinary resolution to require nominated matters to be determined only by an ordinary resolution of the owners corporation at a general meeting.

Division 5—Ballots

- Clause 83 sets out who may arrange a ballot of an owners corporation and in what circumstances.
- Clause 84 provides that a ballot may be conducted by post or by telephone, facsimile, the Internet or other electronic communication.
- Clause 85 requires the person arranging a ballot to give notice in writing to each lot owner at least 14 days before the closing date for the ballot and sets out the matters which must be included in the notice.
- Clause 86 provides that 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 its rules. Matters requiring an ordinary resolution must be passed by a majority of the votes returned by the closing date subject to the quorum requirements set out in clause 77.

Division 6—Proxies and Powers of Attorney

- Clause 87 sets out how a lot owner may authorise a person to act as proxy on their behalf. The authorisation must be in writing in the prescribed form, must authorise a named individual, must not be transferred to a third person, must be delivered to the secretary of the owners corporation, lapses 12 months after being given unless an earlier date is specified, and can be revoked if notice is given to the secretary.

A person holding a proxy who is not a lot owner may not vote on matters affecting them relating to delegations under section 11 or the appointment, payment or removal of a manager under Part 6. the person is also required to act honestly and in good faith and exercise due care and diligence.

Clause 88 sets out how a lot owner may authorise a person to act under a power of attorney on their behalf at a general meeting or in a ballot. If a person is authorised to vote under a power of attorney, Part 4 applies in relation to that power as if the holder were the lot owner.

A person may not vote under a power of attorney in respect of more than one lot owner unless they are exercising a vote on behalf of a family member. A person acting under a power of attorney may authorise a person to act as a proxy under clause 87.

Clause 89 makes it an offence for a person to require or demand that a lot owner give a person a power of attorney or proxy in their favour for the purpose of voting at a meeting or in a ballot. The principle applying here is that a power of attorney or proxy must be freely given. The penalty for this offence is 60 penalty units.

Division 7—Decisions of Owners Corporations

Clause 90 provides that resolutions of the owners corporation may be made at a meeting or by ballot.

Clause 91 provides that there will be one vote per lot.

Clause 92 sets out the procedure for voting at a meeting. Voting may be by show of hands or in another prescribed manner unless the meeting resolves otherwise. All matters other than those requiring special or unanimous resolutions must be determined by a simple majority. However, a lot owner may require that a poll be taken based on one vote for each unit of lot entitlement. In this case, the poll must be taken by written vote.

Clause 93 provides that the chairperson may exercise a casting vote if the voting is equal.

Clause 94 prohibits a lot owner who is in arrears in paying fees or other amounts to the owners corporation from voting, except when a special resolution or unanimous resolution is required.

Clause 95 defines a unanimous resolution.

Clause 96 defines a special resolution as a resolution passed by 75% of the total lots if a ballot or poll is taken, or 75% of the votes in any other case.

Clause 97 sets out the requirements for an interim special resolution, which will take effect if at least 50% of the total votes for all lots vote in favour of a matter requiring a special resolution, and the vote against is not more than 25%. If passed, notice of the interim special resolution must be forwarded to all lot owners within 14 days, stating that it will become a special resolution after 29 days unless lot owners holding more than 25% of the total votes petition the secretary against the resolution.

Division 8—Office-holders

Clause 98 provides that if the owners corporation has a committee, the chairperson of the committee is the chairperson of the owners corporation. If there is no committee, the owners must elect a member as chairperson.

Clause 99 provides that if the owners corporation has a committee, the secretary of the committee is the secretary of the owners corporation. If there is no committee, the lot owners may elect a member to be the secretary. In the absence of the secretary, the functions of the secretary may be carried out by the manager except in the case of a function under section 127 which must be carried out by the chairperson.

PART 5—COMMITTEES

Clause 100 requires an owners corporation with 13 or more lots to elect a committee at each annual general meeting.

It also provides for an owners corporation with less than 13 lots to choose to elect a committee at an annual general meeting.

Clause 101 states that a committee has all the powers and functions that may be delegated by the owners corporation under clause 11, which includes all matters that may be determined by ordinary resolution. This delegation may be withdrawn if the owners corporation decides that a matter may only be determined by ordinary resolution at a general meeting.

Clause 102 enables a committee to delegate by instrument any of its powers and functions to the manager or a lot owner, or sub-delegate to a committee member.

- Clause 103 sets out the conditions for membership of the committee, including that the committee must have between 3 and 12 members, the members must be lot owners or hold proxies on their behalf, and that they hold office until a new committee is elected unless removed at a general meeting. Only one member per lot can join the committee, and a lot owner in arrears is not eligible to be elected to the committee and, if already a committee member, is suspended until the amount is paid.
- Clause 104 defines a casual vacancy on a committee as being a vacancy that occurs between annual general meetings. If there is a casual vacancy, the committee may co-opt another lot owner or a person holding a proxy for a lot owner to be a member of the committee or proceed without filling the vacancy if 3 or more members remain.
- Clause 105 requires the committee to appoint a chairperson from among its members, who is also chairperson of the owners corporation.
- Clause 106 enables the committee to appoint an acting chairperson from among its members if the chairperson is absent or unable to act. The acting chairperson has all the powers and functions of the chairperson.
- Clause 107 requires the committee to appoint a secretary from among its members, who is also secretary of the owners corporation.
- Clause 108 sets out who may call a committee meeting.
- Clause 109 requires the secretary to give at least three days notice of a committee meeting to committee members, or notice as determined by the owners corporation, and to set out the time and place and an agenda for the meeting.
- Clause 110 enables the committee to co-opt any member of a sub-committee to assist it.
- Clause 111 sets out the procedure for a ballot held by a committee, including notice of the proposed resolution and nomination of a closing date for the ballot. A resolution is passed only if a majority of members state that they are in favour of the resolution before the closing date.

- Clause 112 sets out the procedure for a committee meeting, including a requirement that at least half the members be present for a quorum, the manner of voting, the circumstances under which an interim resolution may be made and confirmed, and when the chairperson has a casting vote.
- Clause 113 states that a resolution of the committee has effect as a resolution of the owners corporation.
- Clause 114 requires the secretary of the committee to keep minutes of meetings, sets out what must be recorded in the minutes, and states that a member of the owners corporation may inspect the minutes.
- Clause 115 requires the committee to prepare a report of its activities and the activities of its sub-committees to the annual general meeting.
- Clause 116 enables the committee to appoint sub-committees, with a quorum constituted by at least half the members. It also provides that clauses 105, 106, 107, 108, 109, 110, 111, 112 and 114 apply to a sub-committee as if it were a committee.
- Clause 117 requires a member of a committee or sub-committee to act honestly and in good faith, to exercise due care and diligence, and not to improperly use their position to gain an advantage for themselves or for any other person.
- Clause 118 provides an immunity for committee or sub-committee members who act in good faith in accordance with the Bill and regulations or in the reasonable belief that they were doing so. Any liability that would otherwise have attached to the committee or sub-committee member attaches instead to the owners corporation.

PART 6—MANAGERS

- Clause 119 sets out how an owners corporation may appoint a manager, and the owners corporation's power to revoke that appointment. If a manager is to be paid, the manager must be registered, and must hold sufficient professional indemnity insurance.
- Clause 120 sets out the functions conferred on the manager if there is a committee of the owners corporation, and states that the manager must report to the committee.
- Clause 121 provides that the manager has the functions and powers delegated by the owners corporation under clause 11. Unlike the committee, these powers must be actively determined by the owners corporation.

Clause 122 requires a manager to act honestly and in good faith, to exercise due care and diligence, and not to improperly use their position to gain an advantage for themselves or for any other person.

Sub-clause (2) provides that a manager holds all money held on behalf of an owners corporation on trust for the owners corporation, and must account separately for the money held for each owners corporation.

Clause 123 provides an immunity for unpaid managers who act in good faith in accordance with the Bill and regulations or in the reasonable belief that they were doing so. Any liability that would otherwise have attached to the manager attaches instead to the owners corporation.

Clause 124 provides that a manager may delegate any of his or her functions to an employee.

Clause 125 enables a lot owner or mortgagee to apply to VCAT for an order appointing a manager of the owners corporation if the owners corporation has not appointed a manager.

Clause 126 requires the manager to submit a report of the manager's activities to each annual general meeting, which must include details of the manager's professional indemnity insurance.

Clause 127 makes it an offence for a manager to fail to return all records relating to the owners corporation or its funds within 28 days of ceasing to act as manager. The penalty for this offence is 60 penalty units.

PART 7—DUTIES AND RIGHTS OF LOT OWNERS AND OCCUPIERS

Clause 128 requires a lot owner to comply with the Bill, regulations and the owners corporation rules.

Clause 129 requires a lot owner to maintain any part of the lot that affects the outward appearance of the lot or the use and enjoyment of other lots of the common property, and maintain any service that serves that lot exclusively.

Clause 130 prohibits a lot owner from using or neglecting the common property in a manner likely to cause damage or deterioration.

Clause 131 provides that a lot owner is responsible for the maintenance of any overhanging eaves or guttering if the boundary of the lot is external.

- Clause 132 provides that a lot owner has a right to decorate interior walls, floors and ceilings if the boundary of the lot is on the interior face of the building.
- Clause 133 requires a lot owner to give notice to the owners corporation of any application for a building or planning permit or certification of a plan of subdivision affecting the lot.
- Clause 134 requires a lot owner selling a lot to advise the owners corporation of the name and address of the new owner within one month of completion of the contract, and for the purchaser to do the same.
- Clause 135 requires a lot owner who is absent from their lot for more than 3 months to advise the owners corporation of their mailing address.
- Clause 136 requires a lot owner not occupying his or her lot to give the occupier a copy of the rules when they move in, and to provide a copy of the consolidated rules as soon as possible after lodgement with the Registrar.
- Clause 137 requires an occupier to comply with the Bill, regulations and rules, and prohibits the occupier from using or neglecting the common property in a manner that is likely to cause damage or deterioration to the common property.

PART 8—RULES OF THE OWNERS CORPORATION

- Clause 138 enables an owners corporation to make, amend or revoke rules by special resolution, and provides that rules must be for the purpose of the control, management and administration, use or enjoyment of the common property or of a lot.
- Clause 139 provides that regulations may prescribe model rules which will apply as a default if the owners corporation does not make any rules, or does not make rules relating to a matter included in the model rules.
- Clause 140 states that owners corporation rules have no effect if they unfairly discriminate against a lot owner or an occupier or are inconsistent with any Act or regulation.
- Clause 141 states that the rules of an owners corporation are binding on the owners corporation, lot owners, lessees, sub-lessees and occupiers.

Clause 142 requires an owners corporation to lodge a copy of the rules with the Registrar after they are certified by the secretary. A consolidated copy of the rules must be lodged with the Registrar if there are any amendments. The Registrar must record the rules on the Register kept under the **Transfer of Land Act 1958**. Rules take effect on the day they are recorded in the Register, or a later date if specified in the rules.

Clause 143 requires an owners corporation to ensure that a copy of the rules or any amendment is given to each lot owner as soon as practicable after they are made.

PART 9—RECORDS

Division 1—Keeping of Records

Clause 144 sets out the records that an owners corporation must keep.

Clause 145 sets out how long different classes of owners corporation records must be kept for.

Clause 146 requires the owners corporation to provide lot owners, mortgagees, purchasers or their representatives with a right of access to its records free of charge. A reasonable fee not exceeding the prescribed maximum may be charged to provide any copy of a record.

Division 2—Owners Corporation Register

Clause 147 requires the applicant for registration of a plan creating an owners corporation to establish an owners corporation register. Existing owners corporations will be required to establish an owners corporation register within the time prescribed by the regulations.

Clause 148 sets out what items must be kept on the owners corporation register.

Clause 149 requires the owners corporation register to be kept in a form that is readily accessible and convertible into English.

Clause 150 requires the owners corporation to provide lot owners, mortgagees, purchasers or their representatives with a right of access to the owners corporation register free of charge. A reasonable fee not exceeding the prescribed maximum may be charged to provide a copy of the register or any part of it.

Division 3—Owners Corporation Certificate

Clause 151 provides that any person may apply for an owners corporation certificate, provided the application is in writing and accompanied by the prescribed fee. The owners corporation is required to issue a certificate within 10 business days after receiving an application.

Sub-clause (4) lists the information which must be contained in or accompany the owners corporation certificate.

PART 10—DISPUTE RESOLUTION

Division 1—Complaints and Procedures

Clause 152 sets out the procedure for a lot owner, occupier or manager to make a complaint about an alleged breach of the Bill, regulations or rules.

Clause 153 sets out how owners corporation may respond to a complaint made under clause 152. The owners corporation may only apply to VCAT for an order requiring rectification of the breach, or decide to take no action, if it has first followed the dispute resolution process required by the rules and the matter has not been resolved by this process.

Clause 154 provides that if the owners corporation decides not to take any further action in relation to a complaint, it must give notice of this decision to the complainant, setting out reasons for its decision.

Clause 155 sets out what the owners corporation must do if it decides to take action in respect of the alleged breach, including giving notice of the allegation to the person alleged to have committed the breach, and requiring them to rectify it within 28 days. If the allegation is directed towards an occupier, a copy of the notice must be given to the lot owner.

Clause 156 provides that if the person given notice under clause 155 does not rectify the breach within 28 days, the owners corporation may give the person more time to comply, or give a final notice, or decide not to proceed any further under Part 10. The owners corporation must give notice of its decision to both the complainant and to the person against whom the allegation was made.

Clause 157 sets out the form that a final notice must take, and provides that if the person given the notice still fails to rectify the breach, the owners corporation may apply to VCAT for an order requiring or to take no further action. The owners corporation must give notice of its decision to both the complainant and to the person against whom the allegation was made.

Clause 158 sets out how notice may be given under Part 10.

Clause 159 requires the owners corporation, in relation to Division 1 of Part 10, to report to the annual general meeting regarding the number and nature of complaints made, the number and nature of matters on which action was taken, the number and nature of matters involving an application to VCAT, and the outcome of each action or application.

Division 2—Powers of Director

Clause 160 enables any person to complain to the Director about any matter which the Director has power to refer to conciliation. The Director may ask the complainant to give more information about the complaint within a fixed time period.

Clause 161 allows the Director to refer any dispute between a lot owner, mortgagee, insurer, occupier, purchaser or manager that arises in relation to the operation of the owner corporation for conciliation or mediation (excluding a dispute under section 103(4) of the **Fair Trading Act 1999**).

PART 11—APPLICATIONS TO VCAT

Division 1—Owners Corporation Disputes

Clause 162 sets out the jurisdiction of VCAT to hear and determine "an owners corporation dispute" as defined within the clause.

Clause 163 sets out who may apply to VCAT in relation to an owners corporation dispute.

Sub-clause (2) provides that an application by the owners corporation for an order requiring a lot owner to pay an amount in arrears can only be made if a period of 28 days has elapsed since final notice was given under section 32.

Clause 164 provides that VCAT may dismiss an application requiring rectification of a breach if the owners corporation has not complied with clause 153.

- Clause 165 sets out the orders VCAT may make in determining owners corporation disputes, as well as its power to award damages in the nature of interest.
- Clause 166 empowers VCAT to make an order imposing a civil penalty not exceeding \$250 if it determines that a person has failed to comply with the owners corporation rules.
- Clause 167 requires VCAT in making an order to consider the conduct of the parties, their acts or omissions, the impact of a resolution or proposed resolution on the lot owners as a whole, including whether it would be oppressive or unfairly prejudicial to, or unfairly discriminate against, a lot owner, as well as any other matter VCAT thinks relevant.
- Clause 168 provides that if VCAT makes an order under clause 165 relating to payment of money by the owners corporation, it may order that the money must be paid from contributions levied in relation to the lots in specified proportions and prohibit the owners corporation from levying a contribution from another party to the dispute.
- It may also prohibit a manager from seeking or enforcing an indemnity from the owners corporation or another party if an order is made against the manager.
- Clause 169 requires VCAT to notify the Business Licensing Authority of any order revoking the appointment of a manager.

Division 2—Exemption Orders

- Clause 170 enables an owners corporation to apply to VCAT for an exemption from (a) including a lot owner's name in the owners corporation register; (b) holding insurance where an appropriate insurance policy cannot be obtained on reasonable terms; (c) having a unanimous resolution; and (d) a prescribed provision of the Act or regulations.
- Clause 171 empowers VCAT to make an exemption order under clause 170. VCAT must be satisfied that exceptional circumstances exist for an order under clause 170(a), an exemption under clause 170(b) must only be granted for a specified period, and an exemption under clause 170(c) requires a 75% vote in favour and no votes against.

Division 3—Restriction of Access to Records

Clause 172 enables a person whose personal information is kept in the records or register of the owners corporation to apply to VCAT for an order restricting access to that information, and empowers VCAT to grant an order in such terms if exceptional circumstances exist.

Division 4—Appointment of Administrator

Clause 173 enables 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 to apply to VCAT for the appointment of an administrator for the owners corporation.

Clause 174 empowers VCAT to act on an application under clause 173 by appointing an administrator.

Clause 175 requires the lot owners to pay for the administrator in accordance with their lot liabilities or in accordance with the order.

Clause 176 sets out the powers and responsibilities of an administrator.

Clause 177 requires an administrator to act honestly and in good faith and to exercise due care and diligence.

PART 12—REGISTRATION OF MANAGERS

Division 1—Managers to be Registered

Clause 178 makes it an offence for a person to act as a paid manager unless the person is registered under Part 12. The maximum penalty for this offence is 60 penalty units.

Clause 179 Prohibits a person from being registered as a manager under Part 12 if the person is under 18 years of age, is a represented person within the meaning of the **Guardianship and Administration Act 1986**, or is insolvent or an externally administered body corporate.

Clause 180 provides for a written application for registration as a manager to be made to the Business Licensing Authority, and sets out the evidence and information which must accompany the application.

- Clause 181 enables the Business Licensing Authority to ask the applicant to give it any further information that it reasonably requires to determine the application.
- Clause 182 requires the Business Licensing Authority to register the applicant if it is satisfied that that the applicant is eligible to be registered and has complied with clauses 180 and 181. It also provides that a registration remains in force until it is cancelled or surrendered.
- Clause 183 requires a registered manager to pay a prescribed annual registration fee to the Business Licensing Authority, with the payment accompanied by a statement in an approved form.
- Clause 184 enables a person to, on payment of the prescribed fee, apply to the Business Licensing Authority for an extension of time in which to comply with clause 183.
- Clause 185 requires the Business Licensing Authority to give the manager who fails to comply with clause 183 a written notice stating that unless the manager complies and also pays the prescribed payments or fees by the date specified (at least 14 days after notice), the manager's registration will be cancelled. If the manager still does not then comply with clause 183, registration is automatically cancelled.
- Clause 186 provides that a manager's registration is automatically cancelled if the person becomes a represented person within the meaning of the **Guardianship and Administration Act 1986** or becomes insolvent or an externally administered body corporate.
- Clause 187 sets out the persons who may carry on the management business of a person who was registered as a manager for 60 days after the person ceases to be registered due to death, insolvency, becoming a represented person within the meaning of the **Guardianship and Administration Act 1986**, or becoming an externally administered body corporate. A person so authorised may apply to carry on the business for a longer period, and the Business Licensing Authority may grant such an application imposing any conditions it thinks appropriate in the public interest.
- A person who carries on a management business under this clause is deemed to be a registered manager for the purposes of the Bill.

- Clause 188 makes it an offence for a person not to give the Business Licensing Authority written details of any material change occurring in any of the details provided in the application for registration or in the last statement lodged under clause 183 within 14 days after the person becomes aware of the change. The maximum penalty for this offence is 10 penalty units.
- Clause 189 makes it an offence for a person to give false or misleading information to the Business Licensing Authority under this Part. The penalty for this offence is 60 penalty units.
- Clause 190 empowers the Business Licensing Authority to cancel the registration of a manager it believes on reasonable grounds has obtained registration by providing false or misleading information.
- Clause 191 enables a person whose interests are affected by a decision of the Business Licensing Authority to apply to VCAT for a review of the decision. The application must be made within 28 days of the decision, or the day on which the person is given reasons for the decision or the person is informed that a statement of reasons will not be given.

Division 2—Register of Managers

- Clause 192 requires the Licensing Registrar to keep a register of managers.
- Clause 193 sets out the purposes of keeping the register of managers.
- Clause 194 sets out the details that the register of managers must contain.
- Clause 195 provides that a person may inspect and obtain copies from the register of managers in accordance with any regulations and on payment of any prescribed fee.
- Clause 196 enables the Licensing Registrar to remove any information from the register of managers after 12 years if the Licensing Registrar believes it is no longer necessary or desirable to retain it (subject to the **Public Records Act 1973**).
- Clause 197 requires the Licensing Registrar to act on any information that appears to the Licensing Registrar to be sufficient in each case in the exercise and performance of duties under Part 12.

Division 3—General

- Clause 198 enables the Director and the Business Licensing Authority to disclose to each other information collected in the course of carrying out their functions under the Bill.
- Clause 199 provides for various provisions of the **Fair Trading Act 1999** to extend and apply (with any necessary modifications) to paid managers under this Part. These include the inspection powers (apart from those excepted) set out under Part 10 of the **Fair Trading Act**, the Director's power to obtain information and documents to assist in monitoring compliance, as set out in section 106HA of the **Fair Trading Act 1999**, and some of the enforcement provisions in the **Fair Trading Act 1999**.

PART 13—GENERAL

- Clause 200 provides that the Director may approve forms for the purposes of the Bill, which must be published on the Department's Internet site.
- Clause 201 requires all fees payable to the Business Licensing Authority and all penalties, including civil penalties, payable under this Bill to be paid into the Victorian Property Fund.
- Clause 202 states that a provision of a contract is void to the extent that it purports to exclude, modify or restrict the operation of the Bill.
- Clause 203 states that only the Director or a person authorized by the Director may bring proceedings for an offence against the Bill.
- Clause 204 sets out the regulation making powers under the Bill, including in relation to insurance, lodgement of documents or information with the Registrar of Titles, requiring records or registers to be kept and model rules.
- Clause 205 provides that the transitional provisions in Schedule 2 have effect.

PART 14—AMENDMENT OF THE SUBDIVISION ACT

- Clause 206 repeals the definitions of "body corporate", "land affected by a body corporate", "limited body corporate", "lot entitlement", "lot liability" and "unlimited body corporate" in section 3(1) of the **Subdivision Act 1988**, and inserts new definitions in the same section for "land affected by an owners corporation", "limited owners corporation", "lot affected by an owners corporation", "lot entitlement", "lot liability", "owners corporation", and "unlimited owners corporation".

It also amends the definition of "plan" to take account of amendments made to Part 5 of the **Subdivision Act 1988** in this Bill.

Clause 207 amends section 4(1) of the **Subdivision Act 1988** to provide that that Act applies to an owners corporation and plans as re-defined in clause 206.

Clause 208 amends section 6(1) of the **Subdivision Act 1988**, which deals with the role of a Council in relation to certification of a plan, to substitute references to "Tribunal" for "court" and a reference to "members of the owners corporation under Division 3 of Part 5" for "members of a body corporate under section 32".

Clause 209 amends section 12(2)(a)(iii) of the **Subdivision Act 1988**, dealing with easements and other rights, to refer to "(iii) any land affected by an owners corporation" rather than "any land affected by a body corporate".

Clause 210 amends section 22(1)(f) of the **Subdivision Act 1988**, which deals with registration of plans, to substitute "body corporate" with "owners corporation", and amends section 24(2)(g) which establishes how a later registered plan amends a previously registered plan in specific situations to take account of amendments by this Bill to certain provisions of the **Subdivision Act 1988**.

Clause 211 replaces Part 5 of the **Subdivision Act 1988** with a new Part 5.

PART 5—SUBDIVISIONS WITH OWNERS CORPORATIONS

Division 1—Creation of Owners Corporation

New section 27 provides that a plan may provide for the creation of one or more owners corporations consisting of specified lots. These owners corporations may be unlimited or limited owners corporations, with the plan to specify which category of owners corporation applies to which lots and common property.

New section 27A requires an owners corporation to be created where there is common property.

New section 27B defines an unlimited owners corporation as an owners corporation that is not a limited owners corporation, and requires a document specifying the purposes of the unlimited owners corporation to accompany the plan.

New section 27C defines a limited owners corporation as an owners corporation that is specified on a plan as a limited owners corporation, and requires a document specifying the purposes of the limited owners corporation to accompany the plan. Only the members of the limited owners corporation are entitled to use any common property affected by it.

Sub-clauses (4) and (5) of new section 27C provide that a document may accompany the plan specifying that the unlimited owners corporation may carry out functions or comply with obligations of the limited owners corporation (for example, issuing an owners corporation certificate).

New section 27D states that a lot must not be affected by more than one unlimited owners corporation. It must also not be affected by more than one owners corporation, unless one is an unlimited owners corporation and all the others are limited owners corporations.

New section 27E requires proposed rules to accompany a plan creating an owners corporation or merging owners corporations.

New section 27F requires details of lot entitlement and lot liability to be specified on a plan creating an owners corporation or merging owners corporations, with a document specifying the basis for the allocation of lot entitlement and liability accompanying the plan.

New section 27G provides that a plan creating an owners corporation may specify that it is limited to the common property.

New section 27H requires the Registrar, as prescribed, to record and amend information contained in or provided with a plan.

New section 28 sets out the effect of registering a plan providing for the creation of one or more owners corporations or containing common property. Each owners corporation is incorporated, with the owners becoming the first members. The owners corporation has perpetual succession and a common seal and is capable of suing and being sued in its own name.

New section 29 excludes owners corporations from the Corporations legislation.

Division 2—Common Property

New section 30 provides that when a plan containing common property is registered—

- any common property affected by an unlimited owners corporation vests in the owners of the lots affected by the unlimited owners corporation as tenants in common in shares proportional to their lot entitlement; and
- any common property affected by a limited owners corporation vests in the owners of the lots affected by the relevant unlimited owners corporation as tenants in common in share proportional to their lot entitlement; and
- if there is no unlimited owners corporation affecting the lots, any common property affected by the limited body corporate vests in the owners of lots affected by the limited owners corporation.

New section 31 requires the Registrar to create folios of the Register for any common property in the name of the relevant owners corporation as nominee for the owners of the common property. No certificate of title will be produced for these folios.

New section 31A restricts dealings in common property to those made as part of a dealing with the member's lot, or in relation to an alteration or total consolidation or re-subdivision, or by the owners corporation in accordance with the regulations. A dealing affecting a lot operates as a dealing affecting the lot owner's share in the common property.

Division 3—Alteration of a Subdivision

New section 32 sets out the power of an owners corporation to alter a subdivision by unanimous resolution of the members, listing the ways in which such an alteration can take place.

New section 32AA clarifies that section 32 does not apply to a change in ownership of the common property that occurs because of a change in the ownership of a lot.

New section 32AB provides that an owners corporation cannot compulsorily acquire land under section 32(b), which allows the owners corporation to alter a subdivision by unanimous resolution to purchase land to include in the common property or to become a lot.

New section 32AC enables for the owners corporation to exercise its power to create roads or reserves under section 32(m) even though the land is not land affected by the owners corporation and will not become so after the exercise of the power. It also provides that the owners corporation cannot exercise its powers over land under section 32(m) so that the land vests in itself.

New section 32AD sets out procedures for certification and registration of a plan if an owners corporation alters a subdivision under section 32, including in what circumstances consent to registration of the plan is required. Consent is not required by a lot owner if the common property is not vested in the owner of that lot, or in respect of land that is not the subject of the plan where the new plan does not relate to common property.

New section 32AE requires an owners corporation exercising its powers under section 32 to create, alter or extinguish lot entitlement or lot liability to comply with section 33(2) and (3), which requires the owners corporation to have regard to the value of the lot and consider what would be just and equitable.

New section 32AF limits the owners corporation's exercise of its powers under section 32 to land affected by it or land which will become land affected by it when the power is exercised. If the exercise of a power under section 32 involves land affected by another owners corporation (other than a related limited owners corporation), the other owners corporation must also consent by unanimous resolution.

New section 32AG provides that the Registrar must not amend or cancel a plan to give effect to an owners corporation's decision to dissolve itself under section 32(g) unless satisfied that the owners corporation has no accrued debts.

New section 32AH sets out the effect of an owners corporation merging with another owners corporation, and provides that the plan giving effect to the merger must specify the name of the new owners corporation, the land affected by it, all relevant lot entitlements and liabilities, and whether it is a limited or unlimited owners corporation.

New section 32AI sets out the circumstances in which the owner of a lot affected by an owners corporation may consolidate, subdivide or alter the lot without obtaining a resolution of the owners corporation. Such action may be taken if it does not alter the boundaries of common property, does not alter the boundaries or lot entitlement or liability of lots not being consolidated, subdivided or altered, and does not add an area of land more than 10% (or other prescribed percentage) of the total area in the registered plan.

New section 32AJ prohibits any alteration of a registered plan for an owners corporation except one submitted for certification under this Division or section 23, 32A, 36 or 37, or in accordance with a court or tribunal order under this Act.

New section 32AK(1) provides that the alteration of a registered plan does not affect the legal identity or continuity of the owners corporation (unless otherwise provided in this Part). If the alteration creates an additional owners corporation, the Registrar may rename the original owners corporation, but it will be deemed to be the same body.

New section 32AL(1) sets out the effect of registration of a plan in which all land affected by an owners corporation is consolidated into a single lot. The owners corporation is dissolved and the land vests in the former lot owners as tenants in common in proportion to their lot entitlements. The Registrar may only register the plan if satisfied that the owners corporation has no accrued debts.

Division 4—General Provisions Relating to Plans

New section 32A provides for consolidation or re-subdivision of land affected by one or more owners corporations. The Registrar cannot register the plan unless satisfied that each owners corporation on the existing plan has no accrued debts.

On registration of the plan, each owners corporation on the previous registered plan is dissolved, and the land vests in the former lot owners as tenants in common in proportion to their lot entitlements.

New section 32B enables owners of lots on one or more plans to create a limited or unlimited owners corporation, and amend any registered plan as necessary, provided the plan does not provide for the creation of common property or alteration of existing boundaries.

New section 33 provides that lot entitlement or lot liability may be altered by unanimous resolution of the members. The owners corporation must have regard to the value of the lot in making any change to lot entitlement, and the amount that would be just and equitable for the lot owner contribute towards the expenses of the owners corporation in making any change to lot liability.

New section 34 provides that the Registrar must record all changes and alterations to a plan and that an owners corporation must inform the Registrar of any change of address. It also deems a notice to an owners corporation to be properly addressed if it uses the address shown in the Registrar's records.

Division 5—Disputes and other Proceedings relating to Owners Corporations

New section 34A provides that an owners corporation, an owner of land affected by an owners corporation or a purchaser may apply to VCAT for an order determining a dispute under the Act or the regulations. VCAT may make any order it thinks fit.

New section 34B provides that if a dispute arises between the owners of lots, roads or reserves on a plan, in relation to an easement, they may apply to VCAT for an order determining the dispute. VCAT may make any order it thinks fit.

New section 34C provides that VCAT may refer a dispute under section 34A or 34B to the County Court if appropriate.

New section 34AD sets out the right of specified parties with an interest in land affected by the owners corporation to apply to the VCAT for orders relating to plans. VCAT may make an order even though there is no unanimous resolution authorising the action. However, VCAT must not make an order unless satisfied that—

- the member(s) cannot vote because they are dead, out of Victoria, or cannot be found; or
- for any other reason it is impracticable to obtain the vote of the member or members; or
- the member(s) have refused consent to the proposed action and more than half of the membership with more than half of the total lot entitlement consent to the proposed action, and 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.

VCAT may make any order it thinks fit.

New section 34E(1) provides that 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 VCAT for an order compelling the owners corporation to act as required. VCAT may make any order it thinks fit.

New section 34F empowers VCAT to direct or authorise the Registrar to dispense with the delivery of any certificate of title or other relevant document in an order under this Division.

Division 6—Winding up of Owners Corporation

New section 34G sets out who has the right to apply to VCAT for the winding up of an owners corporation, and who has the right to be heard in an application. VCAT may order the owners corporation to be wound up if it is just and equitable. Notice of an application must be served on the Registrar who must record it in the prescribed manner.

New section 34H provides that if VCAT makes an order under section 34G in respect of an owners corporation, the applicant for the order may apply to the Registrar for amendment or cancellation of the plan as appropriate.

An unlimited owners corporation is dissolved when the Registrar amends or cancels the plan and, subject to the order of VCAT, 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. A limited owner corporation is dissolved when the Registrar amends the plan. The Registrar must notify the Council after amending or cancelling the plan.

- Clause 212 amends the specified provisions of the **Subdivision Act 1988** to substitute the term "owners corporation" for "body corporate".
- Clause 213 repeals section 38 of the **Subdivision Act 1988**, which sets out the powers of the Magistrates' Court in relation to body corporate disputes. This power will be replaced by VCAT's power to make orders under Division 5 of Part 5.
- Clause 214 amends the heading and a reference to section 38 in section 39(2)(a) of the **Subdivision Act 1988**, substituting "Division 5 of Part 5" to refer to VCAT's powers to make orders.
- Clause 215 repeals certain regulation making powers under section 43 of the **Subdivision Act 1988** which refer to body corporate matters now covered by this Bill.
- Clause 216 inserts new sections 47 and 48 to provide for transitional arrangements in relation to certain provisions of the **Subdivision Act 1988** which are deemed to be re-enacted, and to allow for continuation of proceedings already begun in the Magistrates' Court under section 38 of the **Subdivision Act 1988** before its repeal.

PART 15—AMENDMENT TO SALE OF LAND ACT 1962

- Clause 217 substitutes a new section 9AAA into the **Sale of Land Act 1962** providing that the vendor must effect insurance required for an owners corporation until the end of one month after the owners corporation's first meeting if it is held within 6 months of registration, or otherwise, at the end of six months after the plan is registered.
- Clause 218 substitutes a new section 11 into the **Sale of Land Act 1962**, stating that a person cannot sell a lot affected by an owners corporation unless the insurance required by the Act is in place. If not, the purchaser may avoid the sale at any time before the contract is completed.
- Clause 219 repeals section 32(2)(h) of the **Sale of Land Act 1962** and inserts a new section 32(3A) requiring the vendor to attach a copy of the current owners corporation certificate and the documents required to accompany it with the vendor's statement.

PART 16—AMENDMENT OF OTHER ACTS

- Clause 220 amends section 3 of the **Business Licensing Act 1998** to include the **Owners Corporations Act 2006** as a "business licensing Act". This allows an owners corporation manager to apply to the Business Licensing Authority to restrict access to personal information on the Register of Managers.
- Clause 221 amends section 54(1) of the **Domestic Building Contracts Act 1995** to insert a new paragraph (d) to include a dispute between a lot owner or an owners corporation and an initial owner (within the meaning of clause 68 of this Bill) in relation to an obligation imposed on the initial owner under clause 68 to come within the definition of a "domestic building dispute" under the Act.
- Clause 222 amends the **Limitation of Actions Act 1958** to insert a new section 7C to prevent the law of adverse possession applying in relation to common property affected by an owners corporation.
- Clause 223 amends Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to insert a new Part 15AB providing that any member of VCAT may make a declaration in a proceeding under the **Owners Corporations Act 2006**.
- Clause 224 provides for the amendment of other Acts as set out in Schedule 3.

SCHEDULES

Schedule 1 sets out the matters for which an owners corporation may make rules by special resolution, as provided for in clause 138 of the Bill. Model rules will be included in the regulations as set out in clause 139, and these will apply if the owners corporation does not make any rules or revokes all its rules.

Schedule 2 sets out the transitional arrangements to apply in relation to existing bodies corporate.

An existing body corporate is deemed to be an owners corporation on and from the commencement date. Similarly, references in any Act or any instrument made under an Act to a body corporate must be read as a reference to an owners corporation.

Clause 5 provides that the body corporate rules will continue in force and are deemed to be the rules of the owners corporation to the extent that they are not inconsistent with the new Act or regulations.

Clauses 6 and 7 provide that an existing body corporate committee or a body corporate certificate issued under the Subdivision regulations will be deemed to be a committee established by the owners corporation or an owners corporation certificate under the new Act.

Clause 8 provides that a body corporate resolution in force immediately before commencement continues in force to the extent that it is not inconsistent with the new Act or regulations. A postal ballot commenced but not completed before commencement takes effect as a resolution of the owners corporation to the extent that it is not inconsistent with the new Act or regulations. A delegation made by the body corporate and existing immediately before commencement continues in force until revoked by the owners corporation, unless inconsistent with the new Act, in which case it continues in force until the first annual general meeting.

Clause 9 provides that notwithstanding the requirements of the new system of registration for managers, a person who was a paid manager and who applies to the Business Licensing Authority within 3 months after the commencement day may continue to act as a manager without being registered under Part 12 until the Business Licensing Authority makes its decision on the application.

Clause 10 provides that an administrator appointed under section 38 of the **Subdivision Act 1988** continues as administrator of the owners corporation.

Clause 11 provides that the regulations may contain savings or transitional provisions. These regulations may be made retrospective to the date of Royal Assent to allow for unforeseen transitional matters to be properly dealt with.

Schedule 3 provides for the Acts listed in the Schedule to be consequentially amended as set out in the Schedule.