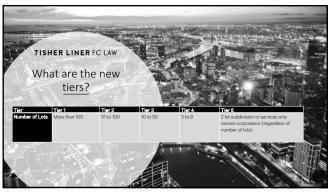


TISHER LINER FC LAW PURPOSE OF AMENDING THE ACT (a) amends the Retirement Villages Act 1986 No. 126 (Vic.) to enable the residents of a retirement village to elect a resident or (b) amends the Subdivision Act 1988 No. 53 (Vic.) including to specify how lot liability and lot entitlement must be allocated.

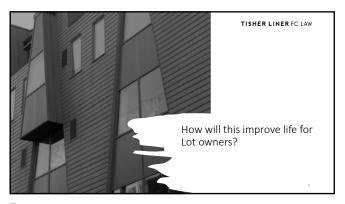
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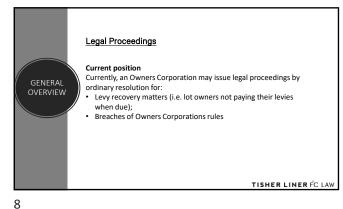
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### **Legal Proceedings**

# Position after amendments

However, any other type of action must be authorised by a special resolution. From 1 December 2021, the Owners Corporation shall continue to be able to issue proceedings for the issues above, but will also be entitled to issue legal proceedings:

- for claims up to \$100,000 (or otherwise in the Magistrates'
  Court of Victoria jurisdiction) by ordinary resolution instead.
   Such action can be taken to the Magistrates' Court of Victoria or the Victorian Civil and Administrative Tribunal or other court with appropriate jurisdiction depending on the nature of the matter; and
- for other claims by the Owners Corporation on application by a lot owner to the Victorian Civil and Administrative Tribunal.

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Legal Proceedings

In any application

GENERAL OVERVIEW

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- a lot owner has the burden of proving why VCAT should make an order if –
- the owners corporation has not voted on a special resolution relating to the matter that is the subject of the lot owner's application; or
- the owners corporation has unsuccessfully voted on a special resolution relating to the matter that is the subject of the lot owner's application and an ordinary resolution would not
- have been passed; and

  any other party to the application has the burden of proving why
  VCAT should not make an order if the owners corporation has
  unsuccessfully voted on a special resolution relating to the matter
  that is the subject of the lot owner's application and an ordinary
  resolution would have been passed.

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## **Exemptions for Tier 5 OCs**



GENERAL OVERVIEW

Tier 5 OCs will be exempt from compliance from a range of provisions of the Act to ensure that its operation can be more streamlined.

Services only owners corporations will also be exempt from compliance with a range of measures including not having to have a chairperson or secretary or provide OC certificates. Must still hold AGMs and have committees.

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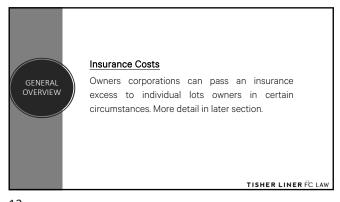
GENERAL OVERVIEW

## Making it easier to execute documents

OCs no longer need a common seal if they don't want one. Documents can be signed by two lot owners authorised by the OC. OC's need to resolve by ordinary resolution that a common seal is no longer required and can be destroyed.

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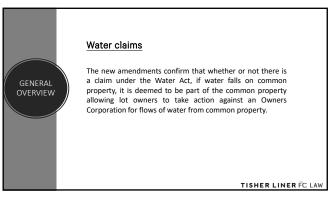
GENERAL OVERVIEW

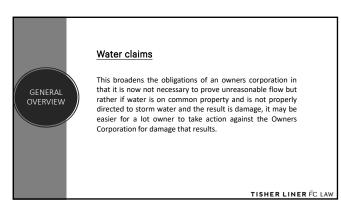
### Water claims

Owners Corporations also have obligations under the Water Act and can be liable for loss and damage caused to lot owners and other neighbours resulting from unreasonable water flow that arises from common property issues. The most common claims involve leaking common property caused by defective waterproofing that then leak into a private lot causing damage. In some cases an Owners Corporation may be liable to fix the issues caused to the private lots as well as consequential loss such as carpet replacement and alternative accommodation costs, by way of example.

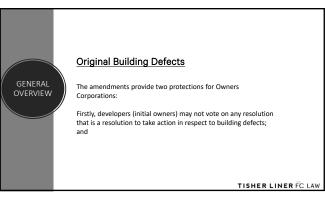
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Original Building Defects

Secondly, a lot owner may apply to the Victorian Civil and Administrative Tribunal to commence proceedings without a special resolution passing if a special resolution vote is called and it would have passed if it were an ordinary resolution (i.e. 50% of the votes were in favour). It is then up to lot owners who object to the action being taken which need to convince the Victorian civil and Administrative Tribunal that the action should not be taken as requested. This ensures that the majority can take action in the Tribunal in circumstances where it is reasonable for the Owners Corporation to take such action.

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# GENERAL OVERVIEW

### The Benefit Principle now

The benefit principle applies principally to two sections of the Act.

Firstly, Section 24 of the Owners Corporations Act 2006 provides that an owners corporation may levy special fees and charges designed to cover extraordinary items of expenditure. Fees for extraordinary items of expenditure relating to repairs, maintenance or other works that are undertaken wholly or substantially for the benefit of some or one, but not all, of the lots affected by the owners corporation must be levied on the basis that the lot owner of the lot that benefits more pays more.

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GENERAL OVERVIEW

### The Benefit Principle now

Secondly, section 49 of the Owners Corporations Act 2006 provides that an owners corporation may recover as a debt the cost of repairs. maintenance or other works undertaken wholly or substantially for the benefit of one or some, but not all, of the lots affected by the owners corporation from the lot owners.

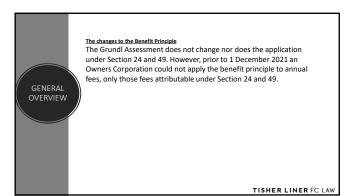
The amount payable by the lot owners is to be calculated on the basis that the lot owner of the lot that benefits more pays more.

The calculation is based on what is called the "benefit principle". The benefit principle needs to be carefully reviewed and applied by an Owners Corporation. There is case law setting out how the benefit principle is to be applied and in particular, the Grundl Assessment must principle is to be applied and in particular, and of some the be applied. In some cases, legal advice is required to ensure the Owners Corporation is correctly applying the assessment.

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Benefit Principle can apply to Annual Fees

Annual fees can be charged to lot owners on the benefit principle

(a) the owners corporation has incurred additional costs arising from the particular use of the lot by the lot owner; and (b)an annual fee set on the basis of the lot liability of the lot owner would not adequately take account of those additional costs.

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GENERAL OVERVIEW



### The changes to the Benefit Principle

This will give greater flexibility for Owners Corporations where some lot owners may use greater services or costs than other lot owners where there are not already separate limited owners corporations to address the problem.

An example of this is where there is just the one owners corporation and you have some retail space using common property toilets but residential lots that don't use the toilets. If you don't have licence agreements in place to deal with the costs, you can levy the retail lot owners the costs of operating the

These amendments will ensure that lot owners that benefit from a particular cost more pay for the cost.

The Grundl Assessment must still be applied in relation to each separate cost.

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### Committees

Committees must have no more than 7 members unless there is an ordinary resolution which increases that to 12 members.

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Current position

It has been difficult for Owners Corporations to remove goods which are left or stored on Common Property. Usually, the Owners Corporations rules. This involves issuing a breach of the Owners Corporations rules. This involves issuing a breach notice and final breach notice and then taking legal action at the Victorian Civil and Administrative Tribunal.

The problem with this is that the process can be costly and disproportionate to the issue.

A common example, might be when a lot owner keeps an couch or outdoor setting in part of the common property and refuses to move it to their private lot property. Owners Corporations may find it difficult to justify spending the costs associated with issuing proceedings.

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### What's changing

The amendments provide a comprehensive process and procedure to deal with private lot chattels which are on common property from 1 December 2021. This is great news for Owners Corporations, their committees and managers. So how does it work?

The amendments allow an Owners Corporation to dispose of goods abandoned on the common property provided that that following the procedure already set out in the Australian Consumer Law and Fair Trading Act 2012 as varied by the amendments. Owners Corporations must provide a notice of their intention to dispose of the abandoned goods.

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That notice must be in writing and include—

- (a) the plan number and address of the owners corporation; and
- (b) a description of the goods; and
- (c) an address at which the goods may be collected; and (d) a statement that on or after a specified date the goods will be disposed of by the owners corporation unless the goods are collected; and
- (e) a statement that the owners corporation will retain from the proceeds of sale of the goods an amount not exceeding the cost to dispose of the goods.

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A notice of intention may be given to the person who abandoned the goods personally or left at, or sent by post to, the person's last known address.

A notice to a person with a publicly registered interest in the abandoned goods is taken to have been given if it has been sent by post to the person's address in the register in which the interest is registered. This means that for serial numbered goods (such as cars, boats etc) or goods for which the Owners Corporation knows is owned by a specific person, the Owners Corporation must obtain a search on the Personal Property Securities Register to see whether or not any party has a secured interest in the goods to be disposed of. If so, the Owners Corporation must notify such parties.

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Before disposing of the goods, an owners corporation may move the

goods to a safe place, if—

(a) the goods block reasonable access to a lot or the common property; and

(b) the governs cornoration has made a reasonable attempt to

(b) the owners corporation has made a reasonable attempt to locate or communicate with the person who abandoned the goods in order to give the person a notice of intention to dispose of abandoned goods.

An owners corporation must not dispose of the goods if—

(a) a dispute exists between the person who abandoned the goods

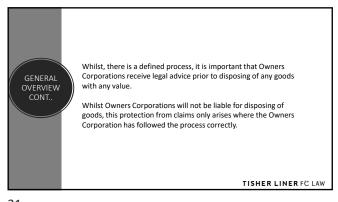
and the owners to the goods; and

(b) an application has been made to VCAT by the owners corporation in relation to the dispute.

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

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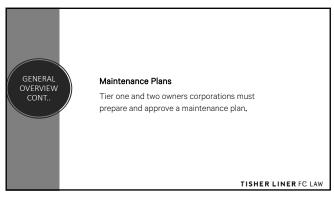
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Developers and their initial obligations

Developers who hold on to the majority of lots after the plan of subdivision is registered must now comply with such obligations for 10 years not 5 years. Initial owners (and their associates) must not be appointed as the manager of the Owners Corporation or vote on resolutions in respect to defects. They must not also designate as a private lot what normally would be common property or services or receive any payment from the manager of the owners corporation in relation to the manager's contract of appointment.

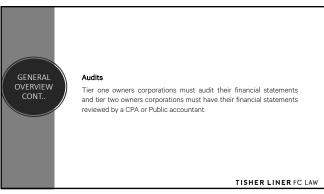
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Developers and appointments of managers and contracts

Developers will be restricted in engaging managers and entering into contracts at the first annual general meeting. Contracts can only be entered into for a maximum period of 3 years subject to hotel and resort management contracts.

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Rules

An owners corporation may make rules in respect of proposed works to renovate or alter the external appearance of a lot—

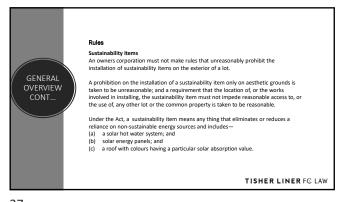
• to protect the quiet enjoyment of all other lots and the common property during those works, and

• to protect the structural integrity of any building on the plan of subdivision from those works, and

• to ensure the market value of any other lot does not decrease as a result of those works.

Rules in general cannot be oppressive to, unfairly prejudicial to or unfairly discriminates against, a lot owner or an occupier of a lot.

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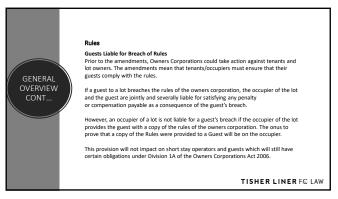


Rules

Broadening of determining that a rule is unfair and unenforceable
Section 140 (a) set out above will be deleted and replaced with "Rules cannot be oppressive to, unfairly replicified to or unfairly discriminates against, a lot owner or an occupier of a lot. This broadens the scope of ensuring that rules are unenforceable if they go too far.

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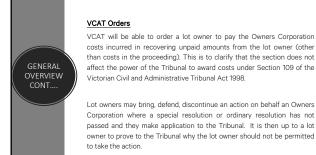


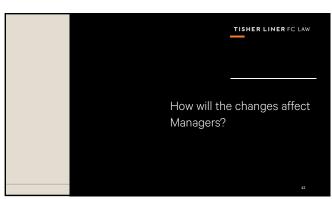
Interim resolutions

If a general meeting of an owners corporation has a quorum and the special resolution is not passed with the requisite number of votes, but there are no votes against the resolution, then the resolution will be taken to be an interim resolution.

This will make it easier for larger owners corporations to make decisions where there are large numbers of lot owners who don't turn up to meetings.

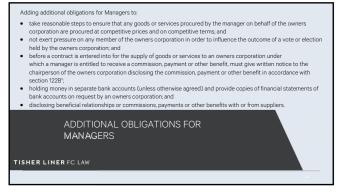
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Contracts of appointments for managers must not include certain prescribed terms such as:

- making an owners corporation convene a general meeting or pass a special resolution to revoke the manager's appointment;

- allowing the manager to renew the contract of appointment at the manager's option;

- automatic renewal of contracts;

- specifying the terms of notice before termination to exceed 3 months for tier one and tier two owners corporations or one month for all other tiers

- CONTRACT OF APPOINTMENTS
- FOR MANAGERS

- TISHER LINER FC LAW

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