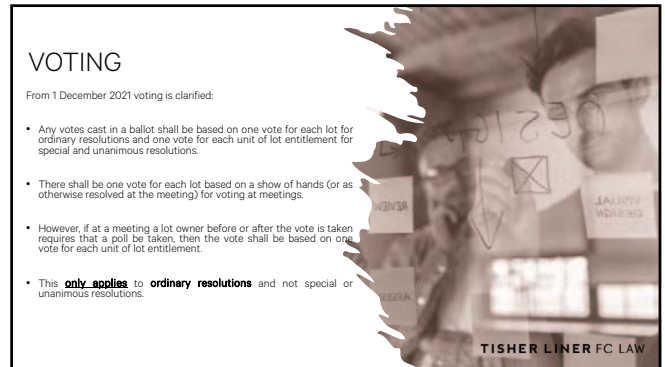
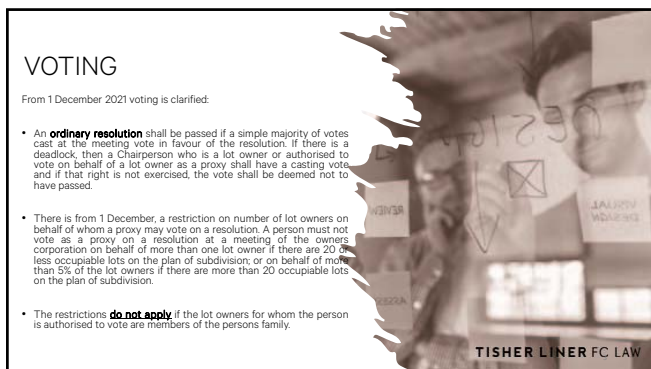




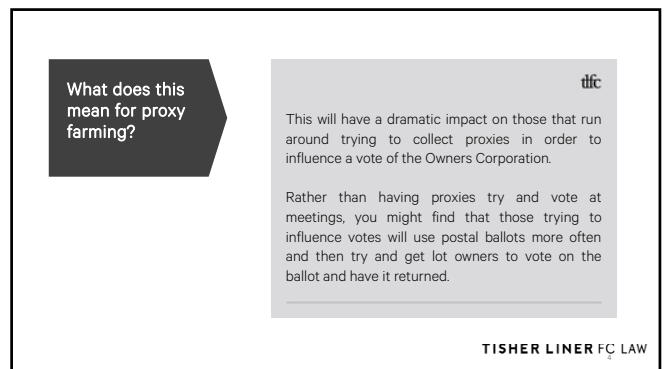
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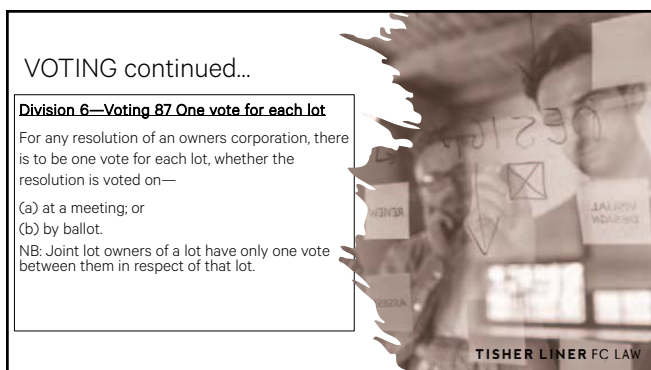
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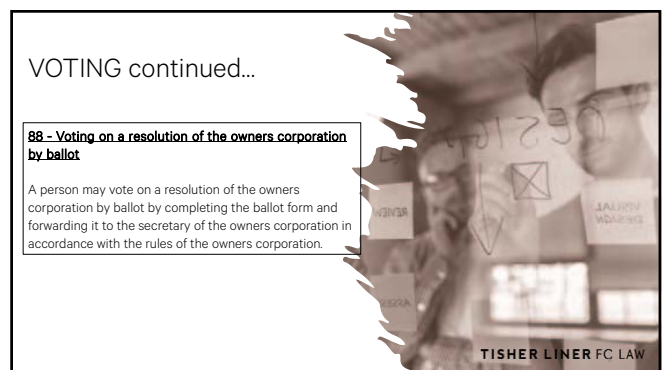
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VOTING continued...

88 - Voting on a resolution of the owners corporation at a meeting

- (1) Subject to subsection (3), a person may vote on a resolution of the owners corporation at a meeting by a show of hands or in another prescribed manner, unless the meeting resolves otherwise.
- (2) Any matter (other than a matter requiring a special resolution or a unanimous resolution) must be determined at a meeting by a simple majority of votes cast at the meeting.
- (3) At a meeting, a lot owner may (either in person or by proxy) before or after the vote is taken for an ordinary resolution, require that a poll be taken based on one vote for each unit of lot entitlement.
- (4) Voting in a poll under subsection (3) must be by written vote.
- (5) If a poll is required after the vote is taken at a meeting, the decision on a matter determined by a simple majority of votes cast at the meeting has no effect and the decision on that matter is the decision of the poll.

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VOTING continued...

89A - Does the chairperson have a casting vote?

- (1) The chairperson of the owners corporation has a second vote or the casting vote on a resolution of the owners corporation if—
 - (a) the voting on the resolution is equal; and
 - (b) the chairperson is a lot owner or authorised to vote on behalf of a lot owner as a proxy.
- (2) If the voting on a resolution is equal and the chairperson does not exercise a casting vote, the resolution of the owners corporation is taken to not be passed.

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QUORUMS

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QUORUMS

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Currently, a quorum was determined for a general meeting by having at least 50% of the total votes or if 50% of the votes is not available the quorum is at least 50% of the total lot entitlement.

From 1 December, this will change to be that a quorum was determined for a general meeting by having at least 50% of the total number of lots or if 50% of the total number of lots is not available the quorum is at least 50% of the total lot entitlement.

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QUORUMS continued...



If a quorum is **not achieved**, then resolutions passed would be interim resolutions.

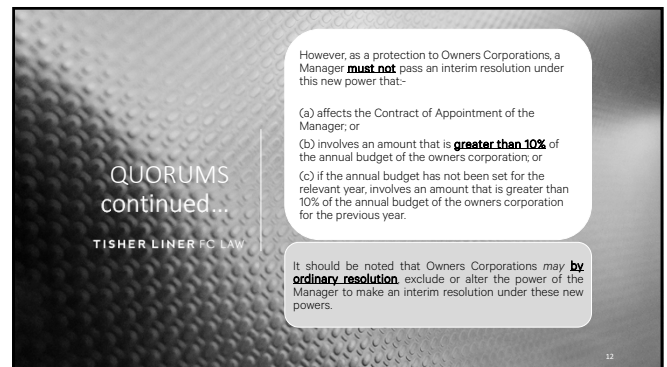


From 1 December, if **no** lot owner turns up to a meeting (whether in person or by proxy), the Manager of an OC may pass an **interim resolution** at a general meeting of the owners corporation at the meeting.

This will be welcome relief to managers that manage owners corporations where lot owners refuse and/or fail to turn up to meetings.

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QUORUMS continued...

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However, as a protection to Owners Corporations, a Manager **must not** pass an interim resolution under this new power that—

- (a) affects the Contract of Appointment of the Manager; or
- (b) involves an amount that is **greater than 10%** of the annual budget of the owners corporation; or
- (c) if the annual budget has not been set for the relevant year, involves an amount that is greater than 10% of the annual budget of the owners corporation for the previous year.

It should be noted that Owners Corporations may **by ordinary resolution** exclude or alter the power of the Manager to make an interim resolution under these new powers.

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QUORUMS
continued...

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Owners Corporations, Committees and Managers need to be careful when counting votes and ensure that misuse/abuse of the new provisions is monitored.

The changes to quorums will assist Owners Corporations making decisions when the majority of lot owners do not take an active interest or participation in the running of their Owners Corporation.

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INSURANCE

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Changes
NEXT EXIT ➔

LEVYING FEES FOR INSURANCE

Owners Corporations will be able to levy fees in relation to insurance as follows:

An owners corporation may levy a lot owner a fee to cover the cost of any of the following:

- (a) an excess amount or **an increased premium** resulting from or attributable to an insurance claim, if the claim is caused by a culpable or wilful act or the gross negligence of—
 - (i) a lot owner; or
 - (ii) a lot owner's lessee; or
 - (iii) a guest of a lot owner or a guest of a lot owner's lessee;

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Changes
NEXT EXIT ➔

CONTINUED...

- (b) **damage to the common property** that is caused by a lot owner or a lot owner's lessee where either—
 - (i) the damage is not covered by insurance; or
 - (ii) the cost of the damage is less than the excess amount that would have been payable on an insurance claim in relation to the damage;
- (c) an excess amount on an insurance claim if the claim solely relates to a lot owner's lot.

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Changes
NEXT EXIT ➔

The biggest change which is of most benefit to Owners Corporations is the last one.

Quite frequently an Owners Corporation may make an insurance claim in relation to an event at a particular lot.

Now the Owners Corporation can pass on the excess amount on that claim to the relevant lot owner as a special levy.

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PUBLIC LIABILITY INSURANCE

➔ Owners Corporations will, from 1 December 2021, now need \$20,000,000 in public liability insurance (currently \$10,000,000).

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INSURANCE FOR LOTS IN MULTI-LEVEL DEVELOPMENTS

From 1 December 2021, if a plan of subdivision has separate buildings and either—

- (a) one or more of those buildings is a multi-level development and each multi-level development has its own owners corporation; or
- b) one of those buildings is a multi-level development with its own owners corporation

the owners corporation of the multi-level development **must** only take out reinstatement and replacement insurance and public liability insurance in respect of the multi-level development on the plan of subdivision for which that owners corporation is liable.



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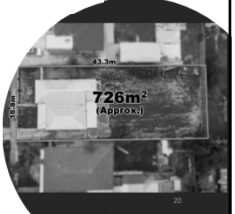
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INSURANCE FOR MULTIPLE SINGLE DWELLINGS

From 1 December 2021, an owners corporation on a plan of subdivision for multiple single dwellings with common property may, **by unanimous resolution**, resolve that the lot owner of each single dwelling is responsible to insure their lot.

This change will benefit the growing trend of suburban residential developments in which owners corporations are being created in normal single dwelling lot subdivisions that were traditional not involving owners corporations.

Developers are creating subdivisions with owners corporations so Councils are not responsible for the maintenance and repair of roads and common infrastructure.



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VALUATION OF BUILDINGS

All owners corporations (except 2 lot subdivisions) must obtain a valuation of all buildings that it is liable to insure at least once every 5 years.

Previously only prescribed owners corporations were required to obtain a valuation.

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MANAGERS & COMMISSION ON INSURANCE

A new provision provides that managers **must** disclose commission, payment or other benefit.

If the contract is an insurance contract and the commission that the manager is entitled to receive is a percentage of the premium payable under the contract, the manager must disclose, by written notice, to the chairperson of the owners corporation the percentage of the premium rather than the actual amount of the commission.

The changes aim at providing clearer disclosure to Owners Corporations of commission. Chairpersons should ensure that the information disclosed to them is provided to all lot owners in the AGM to avoid lot owners not being fully aware of the commission.

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CONTINUED...

If the contract is renewed and the percentage of the premium that the manager is entitled to receive increases, the manager **must make further disclosures** of the percentage of the premium by written notice to the chairperson of the owners corporation.

A manager who fails to make a disclosure required under this **section is taken to breach the duty of a manager under section 122(1)(d) of the Act.**

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REPAIR & MAINTENANCE

- ✓ COMMON PROPERTY
- ✓ SERVICES
- ✓ FIXTURES



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SECTION 46

Section 46 of the Act requires Owners Corporations to repair and maintain common property and any services or fixtures.


➤ But what happens when the Owners Corporation fails to carry out the repairs or maintenance?

Lot owners can become frustrated with inaction and may choose to carry out the works themselves. However, lot owners should not be tempted in carrying out works without express authorisation from the Owners Corporation.

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The Current Position...

The case law that has developed in this area has been that **lot owners have needed consent of the Owners Corporation** to undertake the works and if the works were undertaken without a resolution authorising the reimbursement or payment for the works, the **lot owner was not able to recover the costs of the works from the Owners Corporation**.

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A new express provision...

Whilst the changes from 1 December 2021 don't change the state of the law, **they make it clear** that under a new section 47A of the Act that lot owners must not repair, alter or maintain—

- (a) the common property of the owners corporation; or
- (b) a service in or relating to a lot that is for the benefit of more than one lot or the common property.

Unless authorised expressly by the Owners Corporation as an agent of the Owners Corporation.

This prohibition is subject to section 56 of the Equal Opportunity Act 2010.

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But what does section 56 of the Equal Opportunity Act 2010 (EOA) provide ?

&

How does it apply to Owners Corporations?



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Section 56 states that an owners corporation **must allow a person with a disability** to make **reasonable alterations to common property** to meet his or her special needs if—

- (a) the alterations are at the expense of the person; and
- (b) the alterations do not require any alterations to a lot occupied by another person; and
- (c) the alterations do not adversely affect—
 - (i) the interests of another occupier of a lot affected by the owners corporation; or
 - (ii) the interests of an owner of another lot affected by the owners corporation; or
 - (iii) the interests of the owners corporation; or
 - (iv) the use of common property by another occupier of a lot or an owner of another lot affected by the owners corporation; and
- (d) the action required to restore the common property to the condition it was in before the alterations is reasonably practicable in the circumstances; and
- (e) the person **agrees to restore the common property** to its previous condition **before vacating the lot** and it is reasonably likely that he or she will do so.


SECTION 56

Section 56 is for the benefit of a person with a disability (as defined by the EOA) who owns or is an occupier of a lot affected by an owners corporation.

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What sort of changes can they make?

The Act provides some useful examples. In particular an owners corporation may be able to allow the person to make reasonable alterations to the common property by—

- fixing a ramp to the external facade of the building; or
- installing a mechanical device in the front door of the building to enable the person to open the door automatically.

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Lot owners need to be careful that they only undertake works to common property that are **approved in writing by the Owners Corporation** and that the issue of who is paying for the works **is specified**.

It should be noted that an Owners Corporation **must obtain a special resolution** if the Owners Corporation (or someone as agent for the Owners Corporation) is undertaking a **significant alteration** to the common property under Section 52 of the Act.

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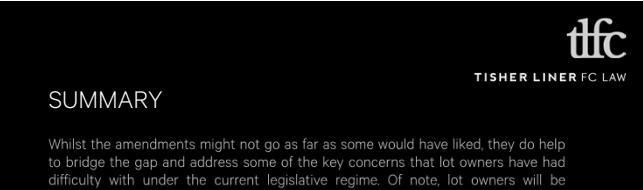
SUMMARY

The amendments attempt to make Owners Corporations easier to operate, particularly where there are large number of lot owners who are not interested in taking part in the owners corporation. It also tries to bring some formality to the obligations of managers and to stamp out the practice by some managers of secretly profiting from owners corporations without full disclosure.

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SUMMARY

Whilst the amendments might not go as far as some would have liked, they do help to bridge the gap and address some of the key concerns that lot owners have had difficulty with under the current legislative regime. Of note, lot owners will be pleased with their ability to have additional protections from initial developer owners as well as the ability to institute legal proceedings against builders when there are building defects by interim special resolutions.

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VCAT ORDERS FOR SECURING OUTSTANDING OC ARREARS

VCAT will be able to order a lot owner to pay the Owners Corporation costs incurred in recovering unpaid amounts from the lot owner (other than costs in the proceeding). This is to clarify that the section does not affect the power of the Tribunal to award costs under Section 109 of the Victorian Civil and Administrative Tribunal Act 1998.

We are recommending that Owners Corporations arrange to pass resolutions at the next upcoming Annual General or at a committee meeting, to resolve to pass on these type of costs incurred by the Owners Corporation. For example, resolving that the lot owner is required to pay the Owners Corporation's costs for issuing a Final Fee Notice. Then, if there is subsequent legal proceeding with respect to the outstanding arrears, the Owners Corporation will be able to produce these documents in support of the application for costs.

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TIPS FOR COMMENCING LEGAL PROCEEDINGS FOR OUTSTANDING ARREARS

In order to obtain VCAT Orders with respect to outstanding arrears, we have the following tips for Owners Corporations to ensure their VCAT Application is successful:

- Please ensure you do not commence proceedings prior to the 28 day expiry period from the Final Fee Notice date
- We note the Tribunal has also been adding an additional 4 business days from the date of the Final Fee Notice to the 28 day expiry date, if the Notices were issued via post. This is because the Tribunal is allowing for delivery of the post, which the Australia Post website is ordinarily delivered within 4 business days after posting.

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TIPS FOR COMMENCING LEGAL PROCEEDINGS FOR OUTSTANDING ARREARS

In order to obtain VCAT Orders with respect to outstanding arrears, we have the following tips for Owners Corporations to ensure their VCAT Application is successful:

- We also recommend adding a further four (4) business days between issuing the Fee Notice and the Final Fee Notice (i.e. an extra four business days to the 28 expiry period of the Fee Notice), when the Notices are only issued by post
- If notices are sent by email, this additional time can be dispensed with.
- Please ensure the Notices are addressed to the correct owner, as listed in the Title Search

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TIPS FOR COMMENCING LEGAL PROCEEDINGS FOR OUTSTANDING ARREARS

- Please ensure you have supporting documents for the charges listed in the Final Fee Notice – for example, if there was a recent changeover in OC Managers, please ensure you have obtained a copy of any Fee Notices issued by the previous OC Manager as well as a copy of the relevant AGM Minutes to ensure the fees were raised correctly

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