



TISHER LINER FC LAW

AMENDMENTS TO THE OWNERS CORPORATION *ACT & REGULATIONS*

Booklet

Legal Update



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Profile

Phillip Leaman is a Partner at Tisher Liner FC Law and specialises in Owners Corporation matters. We believe that strata owners want to maintain peaceful and functional living environments for owners. The key to achieving that goal is to help resolve litigation and other disputes at the property. We have in depth knowledge of the Owners Corporation legislation and regulations and are easily able to quickly identify issues and prospects. We focus on providing practical outcomes that reduce unnecessarily prolonged and expensive litigation.

Our Legal Services

Our very experienced team can provide assistance to owners corporations, committees, lot owners and managers in a range of owners corporations legal matters including:-

- General advice and governance;
- Interpretation of plans of subdivision, common and private lot boundaries;
- Levy recovery;
- Building defect claims and water act claims;
- Adverse possession, easement and amendments to plans of subdivisions;
- Creation, registration and enforcement of owners corporations rules;
- Preparing leases and licences over common property;
- Advice on repairs and maintenance and the application of the Benefit Principle; and
- Prosecuting and defending claims made at VCAT by Owners Corporations and Lot owners.

Overview

The *Owners Corporations and Other Acts Amendment Act 2021* (“**Amending Act**”) has now passed and the changes came into effect on **1 December 2021**. This booklet will provide a key summary of the changes to the *Owners Corporations Act 2006* (Vic) and the *Owners Corporation Regulations 2018*.

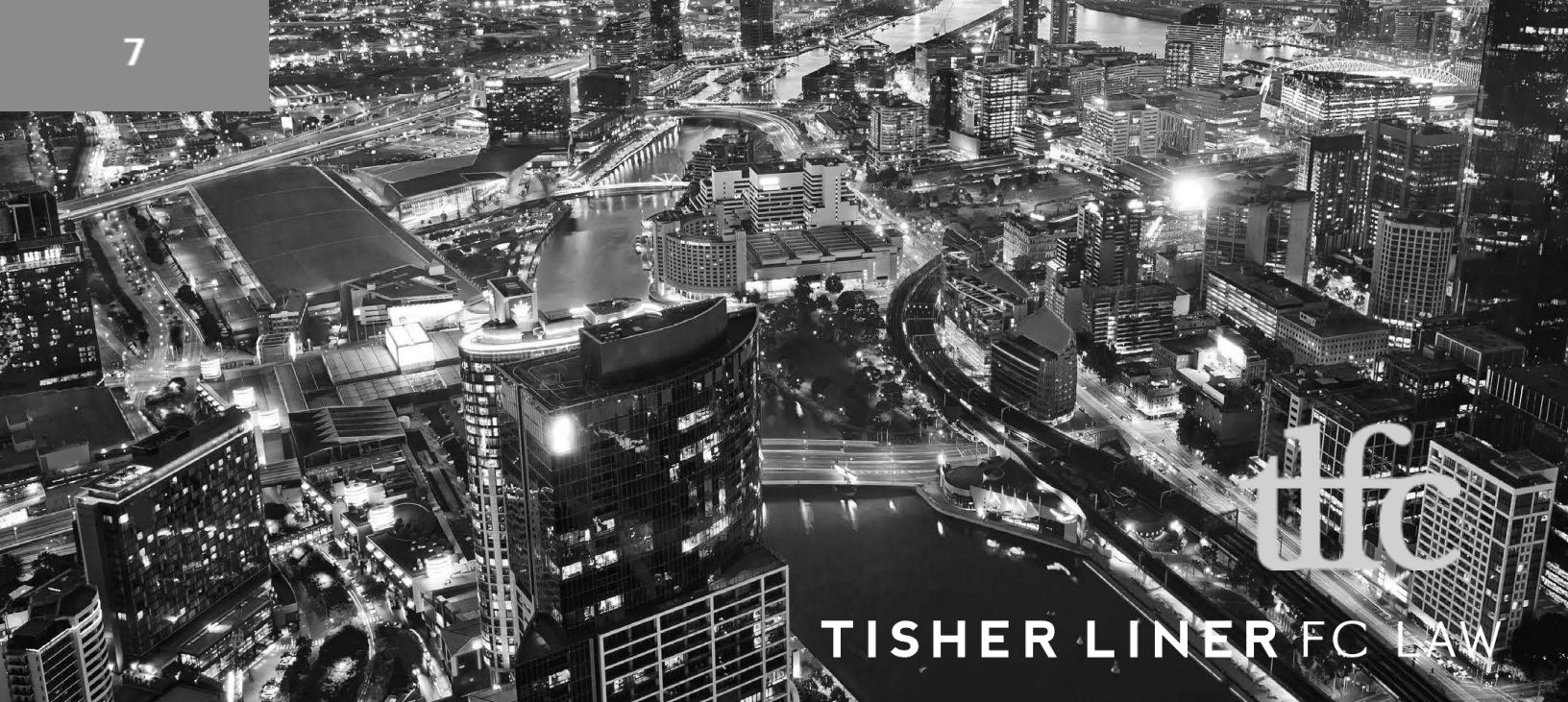
Purpose of Amending the Act

According to section 1, the purpose of the *Amending Act* is to amend the *Owners Corporations Act 2006* No. 69 (Vic) to:

- a) provide for five tiers of owners corporations (OCs) that allow for the degree of regulation of OCs to be based on the number of occupiable lots;
- b) remove the requirement for OCs to have a common seal;
- c) allow OCs to levy fees to cover the premiums for reinstatement and replacement insurance or for any excess amount on an insurance claim;
- d) allow OCs to dispose of goods abandoned on the common property;
- e) provide for what may be disclosed at the first meeting of an OC;
- f) amend the duties of members of committees and sub-committees of OCs;
- g) further restrict the circumstances in which a person with a criminal record may be registered as the manager of an OC;
- h) insert new duties of managers of OCs relating to contracts for goods or services, money held on behalf of OCs on trust and the obligation to disclose beneficial relationships with suppliers of goods or services; and
- i) make other and related amendments.

The amending Act also:

- a) amends the Retirement Villages Act 1986 No. 126 (Vic) to enable the residents of a retirement village to elect a resident committee; and
- b) amends the Subdivision Act 1988 No. 53 (Vic), including to specify how lot liability and lot entitlement must be allocated.



What are the new tiers?

Tier	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
Number of Lots	More than 100	51 to 100	10 to 50	3 to 9	2 lot subdivision or services only owners corporation (regardless of number of lots)

Do lots include accessory lots such as car parks or storage cages separately titled?

If an owners corporation consists of less than 10 occupiable lots and more than 50 non-occupiable lots, the tier into which the owners corporation falls is to be determined as if a reference in those subsections to an occupiable lot were a reference to a non-occupiable lot.

If an owners corporation consists solely of non-occupiable lots, the tier into which the owners corporation falls is to be determined as if a reference in those subsections to an occupiable lot were a reference to a non-occupiable lot.

Legal Proceedings

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.

In any application:

- 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.

General Overview

Exemptions for Tier 5 OCs

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.

Executing 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.

Insurance

Owners corporations can pass an insurance excess to individual lots owners in certain circumstances. More detail in later section.

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.

The new amendments confirm that whether or not there is a claim under the Water Act, if water falls on common property, it is deemed to be part of the common property allowing lot owners to take action against an Owners Corporation for flows of water from common property.

This broadens the obligations of an Owners Corporation in that it is now not necessary to prove unreasonable flow but rather if water is on common property and is not properly directed to storm water and the result is damage, it may be easier for a lot owner to take action against the Owners Corporation for damage that results.

Committees

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

Maintenance Plans

Tier one and two owners corporations must prepare and approve a maintenance plan.

Audits

Tier one owners corporations must audit their financial statements and tier two owners corporations must have their financial statements reviewed by a CPA or Public accountant.

Original Building Defects

The amendments provide two protections for Owners Corporations:

- Firstly, developers (initial owners) may not vote on any resolution that is a resolution to take action in respect to building defects; and
- 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.

Developers

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.

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.

The Benefit Principle

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.

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 Grundle Assessment must be applied. In some cases, legal advice is required to ensure the Owners Corporation is correctly applying the assessment.

The Grundle Assessment does not change nor does the application under Section 24 and 49. However, prior to 1 December 2021 an Owners Corporation could not apply the benefit principle to annual fees, only those fees attributable under Section 24 and 49.

Benefit Principle can apply to Annual Fees

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

- (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.

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 toilets.

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

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

Removal of Goods

Owners Corporations now have a process for removing and disposing of goods on common property.

It has been difficult for Owners Corporations to remove goods which are left or stored on Common Property. Usually, the Owners Corporation must rely upon 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.

What's changed

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.

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.

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.

Removal of Goods (continued)

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.

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 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.

Whilst, there is a defined process, it is important that Owners Corporations receive legal advice prior to disposing of any goods with any value.

Whilst Owners Corporations will not be liable for disposing of goods, this protection from claims only arises where the Owners Corporation has followed the process correctly.



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.

Sustainability Items

An Owners Corporation must not make rules that unreasonably prohibit the installation of sustainability items on the exterior of a lot.

A prohibition on the installation of a sustainability item only on aesthetic grounds is taken to be unreasonable; and a requirement that the location of, or the works involved in installing, the sustainability item must not impede reasonable access to, or the use of, any other lot or the common property is taken to be reasonable.

Under the Act, a sustainability item means anything that eliminates or reduces a reliance on non-sustainable energy sources and includes—

- (a) a solar hot water system; and
- (b) solar energy panels; and
- (c) a roof with colours having a particular solar absorption value.

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 prejudicial 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.

Guests Liable for Breach of Rules

Prior to the amendments, Owners Corporations could take action against tenants and lot owners. The amendments mean that tenants/occupiers must ensure that their guests comply with the rules.

If a guest to a lot breaches the rules of the owners corporation, the occupier of the lot and the guest are jointly and severally liable for satisfying any penalty or compensation payable as a consequence of the guest’s breach.

However, an occupier of a lot is not liable for a guest’s breach if the occupier of the lot provides the guest with a copy of the rules of the owners corporation. The onus to prove that a copy of the Rules were provided to a Guest will be on the occupier.

This provision will not impact on short stay operators and guests which will still have certain obligations under Division 1A of the Owners Corporations Act 2006.

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.

VCAT Orders

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.

Lot owners may bring, defend, discontinue an action on behalf an Owners Corporation where a special resolution or ordinary resolution has not passed and they make application to the Tribunal. It is then up to a lot owner to prove to the Tribunal why the lot owner should not be permitted to take the action.



How will the changes impact Managers?

Additional Obligations for Managers

Adding additional obligations for Managers to:

- take reasonable steps to ensure that any goods or services procured by the manager on behalf of the owners corporation are procured at competitive prices and on competitive terms; and
- not exert pressure on any member of the owners corporation in order to influence the outcome of a vote or election held by the owners corporation; and
- before a contract is entered into for the supply of goods or services to an owners corporation under which a manager is entitled to receive a commission, payment or other benefit, must give written notice to the chairperson of the owners corporation disclosing the commission, payment or other benefit in accordance with section 122B“;
- holding money in separate bank accounts (unless otherwise agreed) and provide copies of financial statements of bank accounts on request by an owners corporation; and
- disclosing beneficial relationships or commissions, payments or other benefits with or from suppliers.

Contract of Appointments

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.

Interim Special Resolutions

The Act will allow managers to pass interim resolutions on some matters where if no lot owner is present at the meeting ensuring that managers can ensure that owners corporations can function.

A common example of this might be the manager resolving to obtain insurance in circumstances where insurance is about to expire.



MEETINGS & VOTING

From 1 December 2021 voting is clarified:

- Any votes cast in a ballot shall be based on one vote for each lot for ordinary resolutions and one vote for each unit of lot entitlement for special and unanimous resolutions.
- There shall be one vote for each lot based on a show of hands (or as otherwise resolved at the meeting) for voting at meetings.
- However, if at a meeting a lot owner before or after the vote is taken requires that a poll be taken, then the vote shall be based on one vote for each unit of lot entitlement.
- This only applies to **ordinary resolutions** and not special or unanimous resolutions.
- An **ordinary resolution** shall be passed if a simple majority of votes cast at the meeting vote in favour of the resolution. If there is a deadlock, then a Chairperson who is a lot owner or authorised to vote on behalf of a lot owner as a proxy shall have a casting vote and if that right is not exercised, the vote shall be deemed not to have passed.
- There is from 1 December, a restriction on number of lot owners on behalf of whom a proxy may vote on a resolution. A person must not vote as a proxy on a resolution at a meeting of the owners corporation on behalf of more than one lot owner if there are 20 or less occupiable lots on the plan of subdivision; or on behalf of more than 5% of the lot owners if there are more than 20 occupiable lots on the plan of subdivision.
- The restrictions do not apply if the lot owners for whom the person is authorised to vote are members of the persons family.

What does this mean for proxy farming?

This will have a dramatic impact on those that run around trying to collect proxies in order to influence a vote of the Owners Corporation. Rather than having proxies try and vote at meetings, you might find that those trying to influence votes will use postal ballots more often and then try and get lot owners to vote on the ballot and have it returned.

Division 6—Voting 87 One vote for each lot

For any resolution of an owners corporation, there is to be one vote for each lot, whether the resolution is voted on—

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

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

88 - Voting on a resolution of the owners corporation by ballot

A person may vote on a resolution of the owners corporation by ballot by completing the ballot form and forwarding it to the secretary of the owners corporation in accordance with the rules of the owners corporation.

89 - 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.

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.



Quorums

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**.

- 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.
- 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.
- 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.



INSURANCE



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;
- (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.

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.**

Public Liability Insurance

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

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.

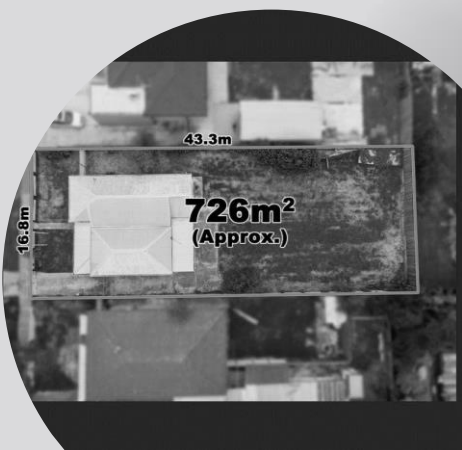


Single Dwellings

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.



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.

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.

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)(f) of the Act.**

Repair & Maintenance

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.

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.

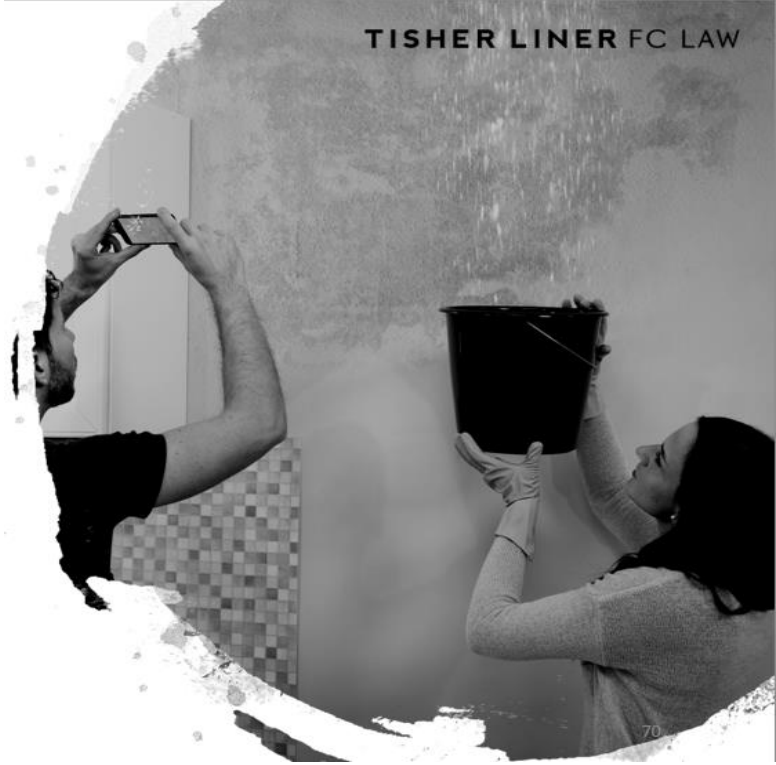
This prohibition is subject to section 56 of the *Equal Opportunity Act 2010*.

S 56 – Equal Opportunity Act

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.

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.

Works to Common Property



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.

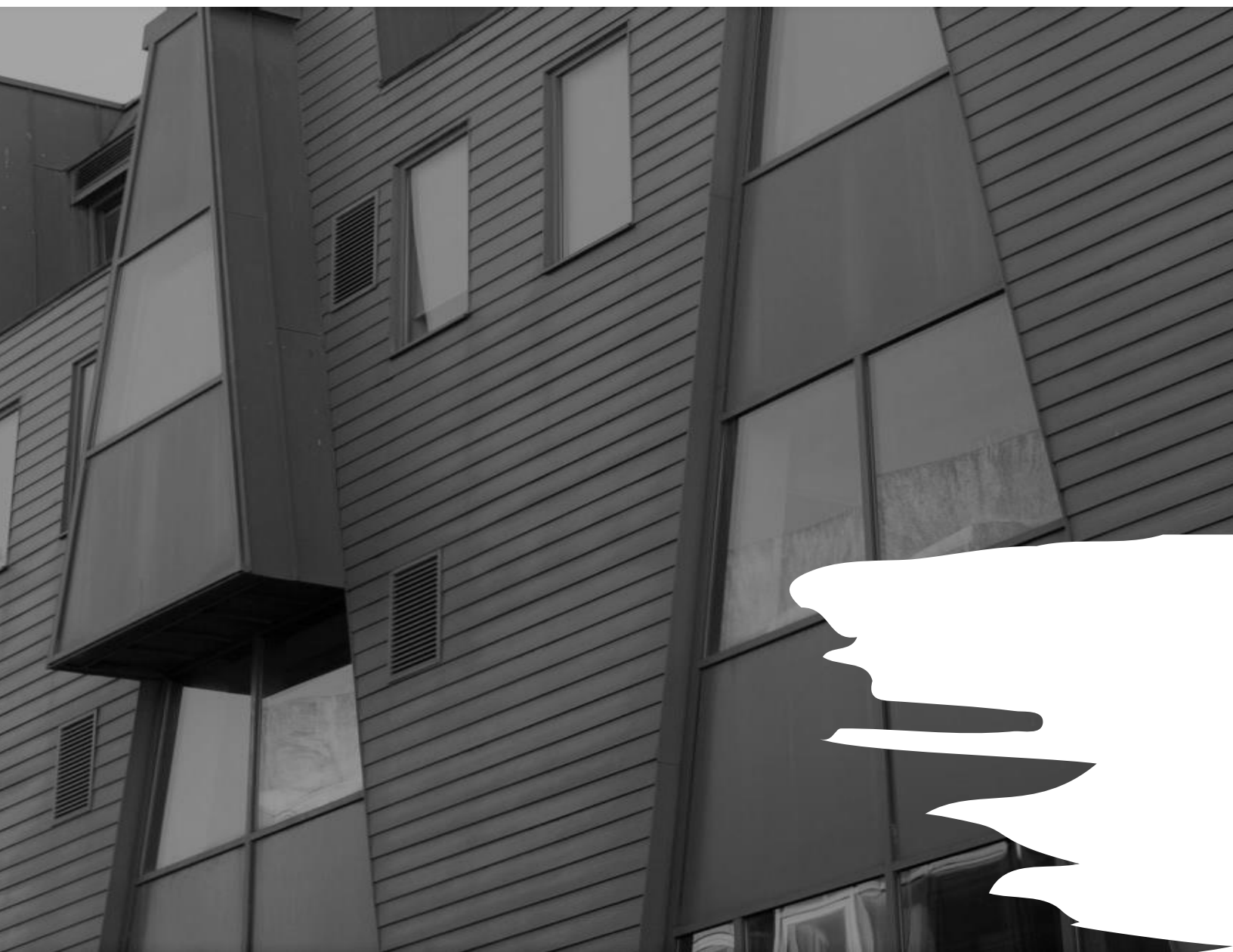
It should be noted that an Owners Corporation must obtain a special resolution if the Owners Corporation (or someone as agent for the Owners Corporation) is undertaking a *significant alternation* to the common property under Section 52 of the Act.

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.



AMENDMENTS TO THE OWNERS CORPORATION REGULATIONS 2018 (VIC)



Purpose of Amending the Regulations

On 1 December 2021, the *Owners Corporation Amendment Regulations 2021* (“**Amending Regulations**”) came into force. We will now provide a key summary of the changes to the *Owners Corporation Regulations 2018* (“**Principal Regulations**”).

The main purpose of the new Amending Regulations is to:

- ✓ amend the Principal Regulations;
- ✓ to prescribe circumstances in which section 89D(1) of *the Owners Corporations Act 2006* does not apply;
- ✓ to prescribe new model rules for owners corporations;
- ✓ to prescribe certain records to be kept by owners corporations;
- ✓ to make other consequential amendments.

Summary of Changes

Changes to Regulation 6 – Prescribed Owners Corporation

The amounts prescribed under Regulation 6 of the Principal Regulations are revoked.



New Meeting Procedures

For the purposes of section 80(1) of the *Owners Corporations Act 2006* (Vic) (“Act”), a lot owner who participates in a general meeting by teleconferencing may do so by using videoconference facilities.

For the purposes of section 89(1) of the Act, the prescribed manner is completing a form, whether hard copy or electronic, which includes the following:

- (a) the owners corporation plan number;
- (b) the lot owner's name and address;
- (c) the lot number;
- (d) if the vote is being cast by proxy, the name of the proxy;
- (e) the closing date for the vote;
- (f) whether the motion requires an ordinary resolution, a special resolution or a unanimous resolution;
- (g) the text of the motion;
- (h) any voting instructions;
- (i) a statement that explains the implications of abstaining from a motion;
- (j) a statement that the lot owner has the right to appoint a proxy;
- (k) the signature of the lot owner or the proxy and the date of the signature.

Restriction on number of lot owners on behalf of whom a proxy may vote on a resolution

For the purposes of section 89D(2)(b) of the Act, the prescribed circumstances are:

- (a) if the lot owner for whom the person is authorised to vote:
 - i. owns more than one lot; and
 - ii. has authorised that person to vote on the lot owner's behalf in relation to each lot; or
- (b) if the owners corporation manages the common property of a commercial, retail or industrial development.

Proceedings of Committee

For the purposes of section 112(4) of the Act, a member who participates in a meeting by teleconferencing may do so by using videoconference facilities.

For the purposes of section 112(10) of the Act, the prescribed manner is participation in a meeting by using videoconference facilities.

Additional records

In addition to the records in section 144 of the Act, an Owners Corporation must keep the following records in respect of the owners corporation:

- (a) the telephone number and email address (if any) of each lot owner;
- (b) records of any homicides (if known) which have occurred on the common property;
- (c) the dates of any gas safety check, electrical safety check and pool barrier compliance check conducted by the owners corporation;
- (d) details of any outstanding recommendations for work to be completed from a gas safety check and electrical safety check;
- (e) notices, orders, declarations, reports or recommendations issued by a building surveyor, municipal building surveyor, public authority or under an Act relating to any building defects or safety concerns associated with the common property.

Prescribed information for register of Managers

For the purposes of section 194(l) of the Act, the prescribed information is all permission determinations under section 182A or 186A of the Act.





Proxy forms

The prescribed Proxy form under Schedule 1 of the Principal Regulations has been updated. If you are an Owners Corporation Manager or self-managed Owners Corporation, you should update your proxy forms.

Changes to the Model Rules

The Amending Regulations have made changes to the following model rules:

Change to Model Rule 7(5) – Dispute Resolution

Regulation 7(5) which previously stated:

*“The parties to the dispute must meet and discuss the matter in dispute, along with either the grievance committee or the owners corporation, within **14 working days** after the dispute comes to the attention of all the parties.”*

Under the Amending Regulations, the time has been extended from 14 working days to 28 calendar days.



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New Model Rules

The Amending Regulations have created additional model rules:

1.4 Smoke penetration

A lot owner or occupier in a multi-level development must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.

1.5 Fire safety information

A lot owner must ensure that any occupier of the lot owner's lot is provided with a copy of fire safety advice and any emergency preparedness plan that exists in relation to the lot prior to the occupier commencing occupation of the lot.

4.1(7) Use of Common Property

The owners corporation may impose reasonable conditions on a lot owner's right or an occupier's right to access or use common property to protect the quiet enjoyment, safety and security of other lot owners, including but not limited to imposing operating hours on facilities such as gymnasiums and swimming pools.

5.2(3) External appearance of lots

The owners corporation cannot unreasonably prohibit the installation of sustainability items on the exterior of the lot, including by prohibiting the installation of a sustainability item only on aesthetic grounds.

5.2(4) External appearance of lots

The owners corporation may require that the location of a sustainability item, or the works involved in installing a sustainability item, must not unreasonably disrupt the quiet enjoyment of other lot owners or occupiers or impede reasonable access to, or the use of, any other lot or the common property.

5.2(5) External appearance of lots

The owners corporation may impose reasonable conditions on the installation of a sustainability item on the exterior of the lot related to the colour, mounting and location of the sustainability item provided that these conditions do not increase the cost of installing the sustainability item or reduce its impact as a sustainability item.

7(5)(A) Dispute resolution

A meeting under subrule (5) may be held in person or by teleconferencing, including by videoconference.

7(6)(A) Dispute resolution

Subject to subrule (6B), the grievance committee may elect to obtain expert evidence to assist with the resolution of the dispute.

7(6)(B) Dispute resolution

The grievance committee may obtain expert evidence to assist with the resolution of a dispute if the owners corporation or the parties to the dispute agree in writing to pay for the cost of obtaining that expert evidence.