

Authorised Version No. 007
Owners Corporations Act 2006

No. 69 of 2006

Authorised Version incorporating amendments as at
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Authorised Version No. 007
Owners Corporations Act 2006

No. 69 of 2006

Authorised Version incorporating amendments as at
1 September 2011

The Parliament of Victoria enacts as follows:

PART 1—INTRODUCTORY

1 Purposes

The main purposes of this Act are—

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

2 Commencement

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

3 Definitions

In this Act—

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

approved form means form approved by the Director under section 200;

bank account means an account with an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth;

building includes—

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

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday appointed under the **Public Holidays Act 1993**;

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

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

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

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

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

externally administered body corporate has the same meaning as it has in the Corporations Act;

function includes duty and authority;

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

land includes buildings and airspace;

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

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

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

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

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

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

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

S. 3 def. of
*ordinary
resolution*
inserted by
No. 2/2008
s. 12(1).

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

ordinary resolution means a resolution other than
a special resolution or a unanimous
resolution;

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

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

owners corporation register means the register
kept by an owners corporation in accordance
with section 147;

plan of subdivision has the same meaning as plan
has in the **Subdivision Act 1988**;

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

Register means the Register under the **Transfer
of Land Act 1958**;

registered manager means a manager registered
under Part 6;

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

rules in relation to an owners corporation, means
the rules of the owners corporation for the
time being in force;

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

PART 2—FUNCTIONS AND POWERS OF OWNERS CORPORATION

Division 1—Functions and powers of owners corporation

4 Functions of owners corporation

An owners corporation has the following functions—

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

- (f) to carry out any other functions conferred on the owners corporation by—
- (i) this Act or the regulations under this Act; or
 - (ii) the **Subdivision Act 1988** or the regulations under that Act;
 - (iii) any other law; or
 - (iv) the rules of the owners corporation.

Note

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

5 Owners corporation must act in good faith

An owners corporation in carrying out its functions and powers—

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

6 Powers of owners corporation

An owners corporation has—

- (a) all the powers conferred on the owners corporation by—
 - (i) this Act or the regulations; or
 - (ii) the **Subdivision Act 1988** or the regulations under that Act; or
 - (iii) any other law; or
 - (iv) the rules of the owners corporation; and
- (b) all other powers that are necessary to enable it to perform its functions.

S. 6(a)(ii)
amended by
No. 36/2011
s. 14.

7 Owners corporations for 2-lot subdivisions

- (1) An owners corporation for a 2-lot subdivision, is exempt from compliance with—
 - (a) sections 18, 31, 32, 59, 60, 61, 62, 65, 93, 94, 95, 96 and 97; and
 - (b) Divisions 2, 3 and 4 of Part 3; and
 - (c) Divisions 1, 2, 3, 4 and 5 of Part 4; and
 - (d) Divisions 1 and 2 of Part 9; and
 - (e) Division 1 of Part 10.
- (2) In this Act or any other Act a reference to—
 - (a) a unanimous resolution, in relation to an owners corporation for a 2-lot subdivision, means a resolution passed by the total votes for those lots; and
 - (b) a special resolution, in relation to an owners corporation for a 2-lot subdivision, means a unanimous resolution.

8 Owners corporations that are limited to common property

If an owners corporation is specified on a plan as being limited to the common property, sections 48, 49, 50 and 51 do not apply to that owners corporation.

9 Power to employ or engage persons

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

10 Power to execute documents etc.

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

Note

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

11 Management of owners corporation and power to delegate

- (1) An owners corporation is to be managed by or under the direction of the lot owners.
- (2) Subject to subsection (3), an owners corporation may, by instrument or by resolution at a general meeting, delegate any power or function of the owners corporation to—
 - (a) the committee of the owners corporation;
 - (b) the manager of the owners corporation;
 - (c) a lot owner;
 - (d) the chairperson of the owners corporation;
 - (e) the secretary of the owners corporation;
 - (f) an employee of the owners corporation.
- (3) An owners corporation must not delegate any of the following powers or functions under subsection (2)—
 - (a) a power or function that requires a unanimous resolution, a special resolution or a resolution at a general meeting;

S. 11
substituted by
No. 36/2011
s. 5.

- (b) the power of delegation under that subsection.

Note

See section 82.

- (4) A resolution under subsection (2) is only effective if it is recorded in the minutes of the general meeting.
- (5) If no delegation is in force under subsection (2)(a), the committee of the owners corporation is delegated all powers and functions that may be exercised by the owners corporation, except for—
- (a) those powers and functions set out in subsection (3); and
 - (b) those matters which must be determined at a general meeting under section 82.
- (6) Subsection (1) does not give rise to any fiduciary duties or directors' duties on the part of lot owners.

Note

See section 5 for duties of an owners corporation.

Division 2—Powers relating to services

12 Provision of services to members and occupiers

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

13 Owners corporation not to carry on business

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

Division 3—Powers relating to property

14 Leasing or licensing of the common property

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

15 Power to obtain lease or licence over land

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

16 Power to acquire and dispose of personal property

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

17 Owners corporation must not mortgage or charge common property

An owners corporation must not mortgage or otherwise charge common property.

Division 4—Power to bring legal proceedings

18 Power to bring legal proceedings

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

Division 5—The common seal

19 The common seal

- (1) The common seal of an owners corporation must include the name of the owners corporation and the plan of subdivision number of the plan that created the owners corporation. S. 19(1)
amended by
No. 1/2010
s. 21(1).
- (2) The common seal must be kept as directed by the owners corporation.
- (3) Despite subsection (1), a common seal that existed prior to the commencement of section 21 of the **Consumer Affairs Legislation Amendment Act 2010** is not invalid solely because it does not include the subdivision plan number. S. 19(3)
inserted by
No. 1/2010
s. 21(2).

20 When can the common seal be used?

- (1) The common seal of an owners corporation must not be used on a document unless its use for that purpose has been authorised by this Act, regulations made under this Act or a resolution of the owners corporation. S. 20(1)
amended by
No. 1/2010
s. 22.
- (2) The resolution to authorise the use of the common seal must be recorded—
 - (a) in the minutes of the general meeting; and
 - (b) if the owners corporation keeps a common seal register, in that register.

21 Who must witness the use of the common seal?

- (1) The use of the common seal on a document must be witnessed by at least 2 persons who are owners of separate lots and are members of the owners corporation.
- (2) Despite subsection (1), in the case of an owners corporation with only one lot owner, the use of the seal must be witnessed by the lot owner.
- (2A) Despite subsection (1), the sealing of an owners corporation certificate in accordance with section 151(4)(c) may be witnessed by—
 - (a) the registered manager; or
 - (b) the chairperson of the owners corporation elected under section 98.
- (3) If a lot owner is a corporation, a director of the corporation may witness the document on behalf of the corporation.
- (4) Each lot owner or director who witnesses the use of the common seal must record next to the seal that he or she has witnessed the use of the seal by—
 - (a) signing his or her name; and
 - (b) printing in full his or her name and address; and
 - (c) stating that he or she is a lot owner or a director of the corporation that is a lot owner.

S. 21(2A)
inserted by
No. 63/2010
s. 77(3).

22 Judicial notice of use of common seal

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

PART 3—FINANCIAL MANAGEMENT

Division 1—Financial powers

23 Owners corporation may levy fees

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

24 Extraordinary fees

- (1) An owners corporation may levy special fees and charges designed to cover extraordinary items of expenditure.
- (2) The fees set must be based on lot liability.
- (3) The owners corporation may determine the times for payment of the special fees and charges.

- (4) A special resolution is required when exercising a power under subsection (1) if the amount involved is more than twice the total amount of the current annual fees set under section 23.
- (5) Subsection (4) does not apply if the fees are levied to pay for or recoup the cost of repairs or maintenance carried out to any part of the property for which the owners corporation is responsible where immediate expenditure is or was necessary to ensure safety or to prevent significant loss or damage to persons or property.

25 Power to borrow money

- (1) An owners corporation may borrow money—
 - (a) by ordinary resolution, if the amount borrowed does not exceed the amount of the current annual fees of the owners corporation set under section 23; or
 - (b) by special resolution in any other case.
- (2) An owners corporation may repay money borrowed.

S. 25(1)(a)
amended by
No. 2/2008
s. 12(2).

26 Power to invest

An owners corporation may invest money.

27 Bank account

- (1) An owners corporation may establish and operate bank accounts.
- (2) Each bank account must be established in the name of the owners corporation.
- (3) All fees levied by an owners corporation under this Part must be paid into a bank account of the owners corporation or of the manager of the owners corporation.

28 Liability of lot owners

- (1) The owners for the time being and any purchaser in possession of, and any person entitled to receive the rents and profits from, a lot are liable to pay any outstanding fees, charge, contribution or amount owing to the owners corporation in respect of that lot.
- (2) A lot owner is not liable to pay or contribute to the funds of the owners corporation a proportion of any amount required to discharge a liability of the owners corporation exceeding the lot owner's lot liability.
- (3) Subsection (2) does not apply to an amount payable to an owners corporation for repairs, maintenance or other works that are undertaken by the owners corporation on common property or a lot and which are wholly or substantially for the benefit of some or one, but not all, of the lots affected by the owners corporation.

29 Penalty interest on arrears

- (1) If authorised by a resolution at a general meeting, an owners corporation may charge interest on any amount payable by a lot owner to the owners corporation that is still outstanding after the due date for payment.
- (2) The rate of interest charged must not exceed the maximum rate of interest payable under the **Penalty Interest Rates Act 1983**.
- (3) The owners corporation may waive the payment of interest in a particular case.
- (4) The owners corporation must report to the annual general meeting on any decision under subsection (3) to waive or not to waive the payment of interest in a particular case and the reasons for that decision.

S. 29(1)
amended by
No. 1/2010
s. 23(1).

S. 29(4)
inserted by
No. 1/2010
s. 23(2).

30 Recovery of money owed

- (1) Subject to subsection (2), an owners corporation may recover any money owed to the owners corporation in any court of competent jurisdiction as a debt due to the owners corporation.
- (2) Sections 31 and 32 and Division 1 of Part 11 apply to the recovery of money owed to the owners corporation by a lot owner.

31 Fee notice

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

32 Final notice

- (1) If the money owing is not paid within 28 days after the date of the fee notice, the owners corporation may send a final notice in the approved form to the lot owner.
- (2) The final notice must—
 - (a) state that the lot owner has an obligation to pay the overdue fees and charges and interest immediately; and

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

Note

Section 163(2) provides that an application to VCAT by the owners corporation for an order requiring a lot owner to pay an amount payable by the lot owner to the owners corporation can only be made if the amount is not paid within 28 days after the final notice is given under section 32.

Division 2—Accounts and audit

33 Financial records

- (1) An owners corporation must keep proper accounts that—
 - (a) cover all income and expenditure of the owners corporation and assets and liabilities of the owners corporation; and
 - (b) provide for the making of true and fair view reports of the financial situation of the owners corporation.
- (2) An owners corporation that has an approved maintenance plan must keep separate accounts for its maintenance fund.

34 Financial statements

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

35 Audit of accounts of owners corporations

- (1) An owners corporation at its annual general meeting may resolve that its financial statements are to be audited after the end of the financial year by—
 - (a) a registered company auditor; or
 - (b) a firm of registered company auditors; or
 - (c) a person who is a member of CPA Australia, the Institute of Public Accountants or the Institute of Chartered Accountants in Australia; or
 - (d) any other person who is approved by the Director as an auditor of the financial statements of the owners corporation for the purposes of this section.
- (2) A prescribed owners corporation must, after the end of each financial year cause its financial statements to be audited by—
 - (a) a registered company auditor; or
 - (b) a firm of registered company auditors; or
 - (c) a person who is a member of CPA Australia, the Institute of Public Accountants or the Institute of Chartered Accountants in Australia; or

S. 35(1)(c)
amended by
Nos 2/2008
s. 13, 36/2011
s. 6.

S. 35(2)(c)
amended by
Nos 2/2008
s. 13, 36/2011
s. 6.

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- (d) any other person who is approved by the Director as an auditor of the financial statements of the owners corporation for the purposes of this section.
- (3) A person who audits the accounts of an owners corporation must provide the owners corporation with a written report of the audit.
- (4) A person may not be appointed as auditor of the accounts of the owners corporation for the purposes of this section if the person has a direct or indirect personal or financial interest in the owners corporation.
- (5) The Director may grant approval to a suitably qualified person or class of suitably qualified persons (other than a person referred to in subsection (4)) to audit the accounts of an owners corporation or a class of owners corporations.
- (6) An owners corporation may apply in writing to the Director for an exemption from the requirements of subsection (2).
- (7) The Director may grant the exemption subject to any conditions the Director thinks fit.
- (8) The Director may at any time, by notice in writing, vary or revoke an exemption under this section.

Division 3—Maintenance plan

36 Maintenance plan

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

37 What must a maintenance plan contain?

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

major capital item includes—

 - (a) a lift; or
 - (b) an air conditioning plant; or
 - (c) a heating plant; or
 - (d) an item of a prescribed class.

38 When does a maintenance plan have effect?

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

39 Report on approved maintenance plan

The owners corporation must report to the annual general meeting in relation to the implementation of its approved maintenance plan.

Division 4—Maintenance fund

40 Establishment of maintenance fund

An owners corporation that has an approved maintenance plan must establish a maintenance fund in the name of the owners corporation.

41 What is the maintenance fund for?

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

42 Payments into maintenance fund

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

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

S. 43
amended by
No. 2/2008
s. 12(2).

43 Payments from maintenance fund

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

44 Extraordinary payments from maintenance fund

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

45 Extraordinary payments for urgent matters

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

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

Division 5—Asset management

46 Owners corporation to repair and maintain common property

An owners corporation must repair and maintain—

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

47 Owners corporation must repair and maintain services

- (1) An owners corporation must repair and maintain a service in or relating to a lot that is for the benefit of more than one lot and the common property.
- (2) An owners corporation may, at the request and expense of a lot owner, repair and maintain a service in or relating to a lot if it is impracticable for the lot owner to repair or maintain that service.

(3) In this section—

service includes 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**.

Note

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

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

48 Lots not properly maintained

- (1) If a lot owner has refused or failed to carry out repairs, maintenance or other works to the lot owner's lot that are required because—
- (a) the outward appearance or outward state of repair of the lot is adversely affected; or
 - (b) the use and enjoyment of the lots or common property by other lot owners is adversely affected—

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

- (2) If a lot owner has been served with a notice under subsection (1), the lot owner must carry out the repairs, maintenance or other works required by

the notice within 28 days of the service of the notice.

- (3) If a lot owner has been served with a notice under subsection (1) and has not complied with the notice within the required time, the owners corporation may carry out the necessary repairs, maintenance or other works to the lot.

49 Cost of repairs, maintenance or other work

- (1) An owners corporation may recover as a debt from a lot owner the cost of repairs, maintenance or other works carried out under section 48(3).
- (2) An owners corporation may recover as a debt the cost of repairs, maintenance or other works undertaken wholly or substantially for the benefit of some only of the lots from the lot owners, but the amount payable by those lot owners is to be calculated on the basis that the lot owner of the lot that benefits more pays more.
- (3) The works referred to in subsection (2) may be to the common property or a lot.

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

An owners corporation may authorise a person to enter a lot or a building on a lot on its behalf to carry out repairs, maintenance or other works in accordance with section 47(1), 47(2) or 48(3).

51 What notice of entry must be given?

- (1) The owners corporation must give at least 7 days' notice in writing to the occupier of a lot of its intention to enter the lot unless—
- (a) the occupier agrees to a lesser time; or
 - (b) there is an emergency.

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- (2) Despite subsection (1), if the lot is occupied under a residential tenancy agreement, the owners corporation must give the same notice to the occupier as that required to be given by a landlord under section 85 of the **Residential Tenancies Act 1997**.
- (3) In this section—
- emergency* includes—
- (a) an interruption to gas, water, electricity, telephone, drainage, sewerage or a similar service; and
 - (b) a leak or a similar problem requiring prompt attention; and
 - (c) cracking or a similar structural problem likely to affect the immediate safety of a building or any person.

52 Significant alteration to common property requires special resolution

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

- (a) the alteration is—
 - (i) first approved by a special resolution of the owners corporation; or
 - (ii) permitted by the maintenance plan; or
 - (iii) agreed to under section 53; or
- (b) there are reasonable grounds to believe that an immediate alteration is necessary to ensure safety or to prevent significant loss or damage.

S. 52(a)(i)
amended by
No. 2/2008
s. 12(2).

53 Upgrading of common property

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

but does not include works that are provided for in an approved maintenance plan or works referred to in section 4(b).

Division 6—Insurance

54 What is an insurable building?

In this Division—

building includes any building on the plan of subdivision and—

- (a) any improvements and fixtures forming part of the building; and
- (ab) any shared services; and
- (b) anything prescribed as forming part of a building—

but does not include—

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

S. 54 def. of *building* amended by No. 1/2010 s. 24(1)(2).

- (d) fixtures removable by a lessee at the end of a lease; or
- (e) anything prescribed as not forming part of a building;

S. 54 def. of *shared services* inserted by No. 1/2010 s. 24(3).

shared services includes any pipes or cables used to provide services including water, electricity, gas and telecommunications to the building that are shared with a person other than the owners corporation or any of its members.

55 Members may take out insurance

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

56 Owners corporation has insurable interest

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

57 Amount payable under owners corporation insurance

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

58 Insurance if lot mortgaged

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

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

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

59 Reinstatement and replacement insurance

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

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

S. 59(2A)
inserted by
No. 1/2010
s. 25.

60 Public liability insurance

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

61 Insurance for lots in multi-level developments

- (1) If a building on a plan of subdivision is located above or below common property, a reserve or a lot, the owners corporation must take out the following insurance in respect of all lots in the plan—
 - (a) reinstatement and replacement insurance for all buildings on each lot in accordance with section 59; and
 - (b) public liability insurance in accordance with section 60—

as if any reference in those sections to common property were a reference to those lots.

s. 62

S. 61(2)
substituted by
No. 2/2008
s. 14.

- (2) Subsection (1) does not apply to—
- (a) a single-storey building; or
 - (b) a plan of subdivision that was registered under the **Cluster Titles Act 1974** or the **Strata Titles Act 1967** unless one or more lots in the plan is located above another lot in the plan.

S. 62
amended by
No. 2/2008
s. 12(3).

62 Owners corporation may have additional insurance

An owners corporation may, by ordinary resolution, resolve to insure any additional insurable interest—

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

63 Insurance not required where there is no common property

By unanimous resolution, an owners corporation may resolve that, if there is no common property, each lot owner must arrange for the lot owner's own insurance.

64 Insurance not required where another owners corporation has insured

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

65 Valuation of buildings

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

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- (3) The owners corporation must present the valuer's report at the next general meeting after it is received.
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PART 4—MEETINGS AND DECISIONS OF OWNERS CORPORATION

Division 1—First meeting of owners corporation

66 When must the first meeting be held?

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

67 What documents must be provided at the first meeting?

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

- (a) the owners corporation register;
- (b) any accounts or records made on behalf of the owners corporation;
- (c) books to enable the owners corporation to keep the necessary minutes, accounts and other records;
- (d) the maintenance plan (if any);
- (e) a copy of the plan of subdivision and all related building plans, planning documents and other similar documents;
- (f) a copy of this Act and the regulations and the **Subdivision Act 1988** and the regulations under that Act;
- (g) any contracts, leases and licences binding on or benefiting the owners corporation;

- (h) any insurance policies in force in relation to the property, including any insurance policy taken out under section 9AAA of the **Sale of Land Act 1962**;
- (i) the names of the companies, tradespeople or suppliers who provided a warranty or other guarantee on any matter for which the owners corporation is responsible and copies of those warranties and guarantees;
- (j) the common seal of the owners corporation.

68 Obligations of initial owner

- (1) Subject to subsection (3), the initial owner of land affected by an owners corporation must act honestly and in good faith and with due care and diligence in the interests of the owners corporation in exercising any rights under this Act.
- (2) Subject to subsections (3) and (4), the initial owner of land affected by an owners corporation must take all reasonable steps to enforce any domestic building contract (within the meaning of the **Domestic Building Contracts Act 1995**) entered into by the initial owner in respect of land in the plan of subdivision providing for the creation of the owners corporation.
- (3) Subsections (1) and (2) apply to an initial owner only while the initial owner is the owner of the majority of the lots affected by the owners corporation and only until the end of the period of 5 years following the registration of the plan of subdivision.
- (4) Subsection (2) applies only to the enforcement of a breach of contract—
 - (a) to the extent that it relates to the common property affected by the owners corporation; and

(b) of which the initial owner is aware or ought reasonably to be aware.

(5) In this section *initial owner* means the person who was the applicant for the registration of the plan of subdivision.

Division 2—Annual general meeting

69 Annual general meeting

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

Note

Section 100 provides for the election of a committee of the owners corporation at the annual general meeting.

70 Who may convene annual general meetings?

- (1) The first meeting of an owners corporation convened under section 66 is the first annual general meeting.
- (2) All other annual general meetings must be convened by—
 - (a) the chairperson of the owners corporation; or
 - (b) the secretary of the owners corporation; or
 - (c) the manager of the owners corporation, acting on the authority of the committee; or
 - (d) in the absence of a committee, the manager of the owners corporation or a lot owner.

71 Agenda for annual general meeting

- (1) The person convening an annual general meeting must prepare an Agenda setting out the matters to be dealt with at the annual general meeting.

- (2) The matters to be dealt with at the annual general meeting must include—
- (a) the election of a committee, if the owners corporation is to have a committee;
 - (b) the appointment of a manager, if applicable;
 - (c) the provision of details of the insurance held by the owners corporation;
 - (d) the provision of details of fees fixed by the owners corporation during the year;
 - (e) the consideration of the financial statements of the owners corporation;
 - (f) the consideration of the proposed annual budget of the owners corporation;
 - (g) the making of any delegations;
 - (h) the consideration of any report under section 29(4), 39, 65(3), 115 or 126 or under section 159 in relation to disputes dealt with under Part 10;
 - (i) the tabling and consideration of the minutes of the previous annual general meeting.

S. 71(2)(h)
amended by
No. 1/2010
s. 26(a).

S. 71(2)(i)
inserted by
No. 1/2010
s. 26(b).

72 Notice of annual general meetings

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

Note

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

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

S. 72(2)(f)
amended by
No. 1/2010
s. 27(1).

S. 72(2)(g)
inserted by
No. 1/2010
s. 27(2).

S. 72(2)(h)
inserted by
No. 1/2010
s. 27(2).

- (c) the text of any special resolution or unanimous resolution to be moved at the meeting; and
- (d) the financial statements of the owners corporation; and
- (e) the proposed annual budget of the owners corporation; and
- (f) a statement that the lot owner has the right to appoint a proxy;
- (g) any report to be considered at the meeting under section 71(2)(h); and
- (h) the minutes of the previous annual general meeting.

Division 3—Special general meetings

73 What is a special general meeting?

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

74 Who can convene a special general meeting?

A special general meeting may be convened by—

- (a) the chairperson of the owners corporation; or
- (b) the secretary of the owners corporation; or
- (c) a lot owner nominated by lot owners whose lot entitlements total at least 25% of all lot entitlements for the land affected by the owners corporation; or

- (d) the manager of the owners corporation—
- (i) acting on the authority of the committee; or
 - (ii) if nominated by lot owners whose lot entitlements total at least 25% of all lot entitlements for the land affected by the owners corporation; or
 - (iii) in the absence of a committee.

75 Agenda for special general meeting

- (1) The person convening a special general meeting must prepare an Agenda setting out the matters to be dealt with at the special general meeting.
- (2) If the person convening the meeting has been nominated under section 74(c) or 74(d)(ii), the Agenda must be in accordance with an Agenda approved by the relevant lot owners when making their nominations.

76 Notice of special general meetings

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

Note

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

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

Division 4—Procedure at general meetings

77 Quorum for a general meeting

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

78 Can a general meeting proceed even without a quorum?

- (1) Subject to subsection (4), if there is not a quorum, the general meeting may proceed but all resolutions are interim resolutions.
- (2) Notice of all interim resolutions and the minutes of the meeting at which the interim resolution is made must be forwarded to all lot owners within 14 days of the meeting.
- (3) The minutes must be accompanied by a notice setting out the effect of subsection (4).
- (4) Interim resolutions become resolutions of the owners corporation—
 - (a) subject to paragraphs (b) and (c), 29 days from the date of the interim resolution; or
 - (b) if notice of a special general meeting is given within that 29 day period and the meeting is held within 28 days after the notice is given, only if confirmed at that meeting; or
 - (c) if notice of a special general meeting is given within that 29 day period and the meeting is not held within 28 days after the notice is given, at the end of that 28 day period.

Note

The effect of subsection (4) is that an interim resolution cannot be acted on for 29 days after it is made but if notice of a special general meeting is given within that 29 day period, the interim resolution cannot be acted on until the resolution is confirmed at that meeting (which must be held

within 28 days after the notice is given) or if the meeting is not held, until the end of that 28 day period.

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

79 Who chairs the general meeting?

- (1) The lot owners present at a general meeting may elect one of their number or the manager of the owners corporation to chair the meeting.
- (2) If the chairperson of the owners corporation is present at a general meeting and an election under subsection (1) has not been made, the chairperson chairs the meeting.

Note

See sections 98, 105 and 106.

S. 79
substituted by
No. 2/2008
s. 15.

Note to
s. 79(2)
inserted by
No. 1/2010
s. 28.

80 Procedure at meeting

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

81 Minutes of meetings

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

- (d) the names of proxies present; and
- (e) the voting on any resolutions; and
- (f) the text of all resolutions of the owners corporation made at the general meeting.

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

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

Note to s. 82
inserted by
No. 1/2010
s. 29.

Note

See section 90(a).

Division 5—Ballots

83 Who can arrange a ballot?

A ballot of an owners corporation may be arranged by—

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

- (ii) if nominated by lot owners whose lot entitlements total at least 25% of all lot entitlements for the land affected by the owners corporation; or
- (iii) in the absence of a committee.

84 How can a ballot be conducted?

A ballot may be conducted by post or by telephone, facsimile, the Internet or other electronic communication.

85 Notice of ballot

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

Note

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

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

86 Resolution by ballot

- (1) A person may vote in a ballot by completing the ballot form and forwarding it to the secretary of the owners corporation in accordance with the rules of the owners corporation.

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- (2) A resolution of the owners corporation by ballot is made as follows—
- (a) matters requiring an ordinary resolution must be passed by a majority of the votes returned by the closing date but the number of votes returned must be not less than the number needed for a quorum in accordance with section 77;
 - (b) other matters must be passed by a special resolution or unanimous resolution, as appropriate.
- (3) If a ballot is arranged by a person nominated by lot owners, the lot owners must give the owners corporation all information necessary to enable it to keep records of the ballot.

Division 6—Proxies and powers of attorney

87 Proxies

- (1) A lot owner may authorise a person in writing to act as proxy for any of the following—
- (a) to attend, speak or vote on the lot owner's behalf at a meeting of the owners corporation;
 - (b) to vote on the lot owner's behalf at a ballot;
 - (c) to represent the lot owner on the committee of the owners corporation.

**Note to
s. 87(1)
inserted by
No. 36/2011
s. 7.**

Note

See section 138A.

- (2) The authorisation may set out how to vote on particular matters.

- (3) An authorisation under subsection (1)—
- (a) must be in writing in the prescribed form; and
 - (b) must authorise a named individual; and
 - (c) must not be transferred by the holder of the proxy to a third person; and
 - (d) must be delivered to the secretary of the owners corporation; and
 - (e) is effective from the beginning of the first meeting of the owners corporation held after it is delivered to the secretary; and
 - (f) lapses 12 months after being given or, if there is an earlier date specified in the authorisation, on that date; and
 - (g) is revoked on the date that notice of the revocation is delivered to the secretary.
- (4) A person who is not a lot owner and who holds a proxy for a lot owner may not vote on matters affecting himself or herself relating to—
- (a) the delegation of powers and functions under section 11; or
 - (b) the appointment, payment or removal of a manager under Part 6.
- (5) A person authorised to act as proxy must act honestly and in good faith and exercise due care and diligence.
- (6) A lot owner may revoke an authorisation given under this section and vote at a meeting or in a ballot instead of the person who was authorised.
- (7) A contract of appointment of a manager made in contravention of subsection (4)(b) is voidable by the owners corporation unless it is affirmed by the owners corporation by special resolution.

S. 87(3)
amended by
No. 2/2008
s. 16.

88 Voting under power of attorney

- (1) A person acting under a power of attorney may vote on the lot owner's behalf at a general meeting or in a ballot of the owners corporation if this is authorised by the power of attorney.
- (2) A person is not entitled to exercise, under a power of attorney, the power of a lot owner to vote if the person has that power in respect of another lot owner under another power of attorney.
- (3) Subsection (2) does not apply if the lot owners for whom the person is to exercise a vote are members of that person's family.
- (4) A person acting under a power of attorney for a lot owner may authorise a person to act as a proxy under section 87.
- (5) If a person is authorised under a power of attorney to vote on behalf of a lot owner, this Part applies in relation to that power as if the holder of the power of attorney were the lot owner.

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

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

Penalty: 60 penalty units.

Division 7—Decisions of owners corporation

90 Resolutions by meeting or ballot

Resolutions of the owners corporation may be made—

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

91 One vote for each lot

There is to be one vote for each lot.

Note

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

92 Voting at a meeting

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

93 Does the chairperson have a casting vote?

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

S. 94
substituted by
No. 1/2010
s. 30.

94 Can a lot owner vote if fees are unpaid?

- (1) Subject to subsection (2), a lot owner who is in arrears for any amount owed to the owners corporation is not entitled to vote, either in person, by ballot or by proxy, unless the amount in arrears is paid in full.
- (2) A lot owner who is in arrears for any amount owed to the owners corporation is always entitled to vote in a case where a special resolution or unanimous resolution is required.
- (3) For the purposes of subsection (1), except in the case of a payment in cash, an amount is only taken to be paid in full if it is paid not less than four business days before the vote in question.

95 What is a unanimous resolution?

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

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

Example

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

96 What is a special resolution?

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

- (a) if a ballot or poll is taken, 75% of the total lot entitlements of all the lots affected by the owners corporation; or

(b) in any other case, 75% of the total votes for all the lots affected by the owners corporation.

Example

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

97 Interim special resolutions

- (1) If, at a meeting or by ballot, the vote in favour of a matter requiring a special resolution is at least 50% of the total votes for all lots affected by the owners corporation and the vote against the resolution is not more than 25% of those votes, the resolution is to be taken to be passed as an interim special resolution.
- (2) If the interim special resolution is passed at a meeting, notice of the interim special resolution and the minutes of the meeting at which the interim special resolution was passed must be forwarded to all lot owners within 14 days of the meeting.
- (3) If the interim special resolution is passed by ballot, notice of the interim special resolution (including the text of the resolution) must be forwarded to all lot owners within 14 days of the close of the ballot.
- (4) The notice under subsection (2) or (3) must state that the interim special resolution will become a special resolution at the end of 29 days after it was passed unless lot owners who hold more than 25% of the total votes for all the lots affected by the owners corporation petition the secretary against the resolution.

- (5) An interim special resolution becomes a special resolution of the owners corporation on the day that is 29 days after the day the interim special resolution was passed unless lot owners who hold more than 25% of the total votes for all the lots affected by the owners corporation petition the secretary against the resolution.

Note

The effect of subsection (5) is that an interim special resolution cannot be acted on for 29 days after it is passed and cannot be acted on at all if a petition is received by the secretary within that 29-day period.

Division 8—Office-holders

98 Chairperson of owners corporation

- (1) If an owners corporation does not have a committee, the lot owners must elect a member to be the chairperson of the owners corporation.
- (2) If an owners corporation has a committee, the chairperson of the committee is also the chairperson of the owners corporation.
- (3) A chairperson elected by the lot owners of an owners corporation under subsection (1) may be removed by resolution at a general meeting.

S. 98(3)
inserted by
No. 1/2010
s. 31.

99 Secretary

- (1) If an owners corporation does not have a committee, the lot owners may elect a member to be the secretary of the owners corporation.
- (2) If an owners corporation has a committee, the secretary of the committee is also the secretary of the owners corporation.

Note to
s. 99(2)
inserted by
No. 1/2010
s. 32(1).

Note

See section 107.

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- (2A) A secretary elected by the lot owners of an owners corporation under subsection (1) may be removed by resolution at a general meeting.
- (3) If at any time there is not a secretary of the owners corporation or the secretary is absent, the functions of the secretary under this Act may be carried out by—
- (a) in the case of a function under section 127, the chairperson of the owners corporation; and
 - (b) in any other case, the manager of the owners corporation.
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S. 99(2A)
inserted by
No. 1/2010
s. 32(2).

PART 5—COMMITTEES

100 Election of committee

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

S. 101
substituted by
No. 36/2011
s. 8.

101 Functions and powers of committee

Subject to the rules of the owners corporation, a committee has all the powers and functions that are delegated to it by or under section 11.

Note

Powers and functions that require a unanimous resolution, a special resolution or a resolution at a general meeting of the owners corporation cannot be delegated under section 11.

102 Delegation by committee

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

103 Membership of committees

- (1) A committee of an owners corporation must have at least 3 and not more than 12 members.
- (2) The members of the committee must be lot owners or hold proxies on behalf of lot owners.
- (3) There must not be more than one member of the committee from any one lot.

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- (4) A lot owner or a proxy for a lot owner may nominate for election as a member of the committee—
 - (a) in writing; or
 - (b) orally if the lot owner is present at the annual general meeting.
 - (5) Subject to this Act and the regulations, the members of the committee hold office from their election until a new committee is elected.
 - (6) The owners corporation may at an annual general meeting or special general meeting resolve to add or remove a committee member or replace or remove a committee.
 - (7) If a lot owner is in arrears for any amount of fees or other amount owing to the owners corporation—
 - (a) the lot owner or a proxy for the lot owner is not eligible to be elected as a member of the committee; and
 - (b) if the lot owner or a proxy for a lot owner is a member of the committee at the time the amount came into arrears, the lot owner is suspended as a member of the committee until the amount is paid.

104 Casual vacancies on a committee

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

s. 105

S. 105
amended by
No. 1/2010
s. 34 (ILA
s. 39B(1)).

105 Chairperson of committee

- (1) The members of the committee must appoint a member of the committee to be the chairperson.
- (2) An appointment as chairperson under subsection (1)—
 - (a) is to be conducted by means of a majority vote;
 - (b) may be revoked by means of a majority vote.
- (3) If a person's appointment as chairperson of a committee is revoked under subsection (2)(b), that revocation does not affect the person's membership of the committee.

S. 105(2)
inserted by
No. 1/2010
s. 34.

S. 105(3)
inserted by
No. 1/2010
s. 34.

106 Acting chairperson

- (1) The members of the committee may appoint a member of the committee to act as chairperson in the event that the chairperson is absent or unable to act.
- (2) The acting chairperson has all the powers and functions of the chairperson while acting as the chairperson.

S. 107
amended by
Nos 2/2008
s. 17, 1/2010
s. 35 (ILA
s. 39B(1)).

107 Secretary of committee

- (1) The members of the committee must appoint a member of the committee or the manager of the owners corporation to be the secretary of the committee.
- (2) An appointment as secretary of the committee under subsection (1)—
 - (a) is to be conducted by means of a majority vote;
 - (b) may be revoked by means of a majority vote.

S. 107(2)
inserted by
No. 1/2010
s. 35.

- (3) If a person's appointment as secretary of the committee is revoked under subsection (2)(b) and that person is a lot owner, that revocation does not affect the person's membership of the committee.

S. 107(3)
inserted by
No. 1/2010
s. 35.

108 How can a meeting of a committee be called?

A meeting of a committee may be called by—

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

Note

See section 11 for power to delegate.

109 Notice of meetings

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

S. 109(2)(a)
amended by
No. 1/2010
s. 36(a).

S. 109(3)(b)
amended by
No. 1/2010
s. 36(b).

s. 110

S. 109(3)(c)
inserted by
No. 1/2010
s. 36(c) (as
amended by
No. 63/2010
s. 26).

(c) the minutes of the previous meeting; and

S. 109(3)(d)
inserted by
No. 1/2010
s. 36(c) (as
amended by
No. 63/2010
s. 26).

(d) a statement that a member of the committee who is a lot owner may appoint a proxy for the purpose of the meeting.

110 Co-opted members

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

111 Ballots

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

Note

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

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

112 Proceedings of committee

- (1) The quorum for a meeting of a committee is at least half of the members of the committee.
- (2) A resolution of a committee must be made—
 - (a) by ballot; or
 - (b) by show of hands or in another prescribed manner.
- (3) Each member participating in a meeting is entitled to one vote.
- (4) A member may participate in a meeting in person or by teleconferencing in accordance with the regulations.
- (5) A person co-opted to assist the committee is not entitled to vote at a meeting.
- (6) If there is not a quorum for a meeting of a committee, the members of the committee present may make an interim resolution.
- (7) An interim resolution does not take effect unless it is confirmed—
 - (a) at the next meeting at which a quorum is present; or
 - (b) by ballot under section 111; or
 - (c) in accordance with the rules.
- (8) A resolution of the committee is a resolution that a majority of the members participating in a meeting of the committee agree is a resolution of the committee.
- (9) In the event of an equality of votes, the chairperson of the committee has a second or casting vote.

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- (10) A person who participates in a meeting by means of teleconferencing or another prescribed manner is to be taken to be present in person at the meeting.
- (11) Subject to this Act and the directions of the owners corporation, the committee may regulate its own proceedings.

113 Resolutions of committee to be resolutions of owners corporation

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

114 Minutes

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

115 Committee to report

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

116 Sub-committees

- (1) The committee may appoint sub-committees in accordance with the rules.
- (2) The rules may provide for the role and functions of a sub-committee.
- (3) A quorum for a meeting of a sub-committee is at least half the members of the sub-committee.
- (4) Sections 105, 106, 107, 108, 109, 110, 111, 112 and 114 apply to a sub-committee as if it were a committee.

117 Duties of committees and sub-committees

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

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

118 Immunity of committee members

- (1) A member of a committee or a sub-committee is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under this Act or the regulations.

Owners Corporations Act 2006
No. 69 of 2006
Part 5—Committees

s. 118

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- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a person, attaches instead to the owners corporation.
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PART 6—MANAGERS

119 Appointment and removal of manager

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

120 Functions of manager where there is a committee

- (1) If there is a committee of the owners corporation, a manager has the functions conferred on the manager by—
 - (a) this Act and the regulations; and
 - (b) the rules of the owners corporation; and
 - (c) the owners corporation by resolution; and
 - (d) delegation by the owners corporation.

S. 120(1)(c)
amended by
No. 1/2010
s. 37.

- (2) If there is a committee of the owners corporation, the manager must report to the committee, as required by the committee, on the carrying out of the functions conferred on the manager.

S. 121
substituted by
No. 1/2010
s. 38.

121 Functions of the manager where there is no committee

If there is no committee of the owners corporation, the manager has the functions and powers that are conferred on the manager by—

- (a) this Act and any regulations made under this Act;
- (b) the rules of the owners corporation;
- (c) the owners corporation by resolution;
- (d) delegation by the owners corporation.

122 Duties of manager

- (1) A manager—
- (a) must act honestly and in good faith in the performance of the manager's functions; and
 - (b) must exercise due care and diligence in the performance of the manager's functions; and
 - (c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person.
- (2) A manager—
- (a) holds all money held on behalf of an owners corporation on trust for the owners corporation; and
 - (b) must account separately for the money held for each owners corporation by the manager.

123 Immunity of volunteer manager

- (1) A member of an owners corporation who carries out the duties of a manager of the owners corporation (without fee or reward) is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that but for subsection (1), would attach to a person, attaches instead to the owners corporation.

124 Delegation

A manager may delegate to an employee of the manager any function conferred on the manager including a function conferred by delegation.

125 VCAT may appoint manager

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

126 Report

- (1) The manager of an owners corporation must submit a report of the manager's activities to each annual general meeting of the owners corporation.
- (2) The report must include details of the professional indemnity insurance held by the manager in compliance with section 119(5).

127 Manager to return records

A manager of an owners corporation must, within 28 days of termination of appointment as manager, return to the secretary of the owners corporation all records relating to the owners corporation or funds of the owners corporation held or controlled by the manager.

Penalty: 60 penalty units.

PART 7—DUTIES AND RIGHTS OF LOT OWNERS AND OCCUPIERS

128 Compliance with laws

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

129 Care of lots

A lot owner must—

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

130 Care of common property

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

131 Overhanging eaves

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

132 Right to decorate interior walls, floors and ceilings

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

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

133 Notice of planning and building applications and plans of subdivision

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

134 Address of new owners

- (1) A lot owner who sells a lot must advise the owners corporation of the name and address of the new owner within one month of the completion of the contract.
- (2) A person who acquires a lot must advise the owners corporation of the person's name and address within one month of the completion of the contract.

135 Address of absent owners

- (1) A lot owner who does not occupy the lot or who will be absent from the lot for more than 3 months must advise the owners corporation of the lot owner's mailing address in Australia for service of notices and any changes to it as soon as possible.
- (2) If an address in Australia has not been nominated under subsection (1), service may be effected—
- (a) by posting the notice to the last known address of the lot owner in Australia; or

S. 135
amended by
No. 36/2011
s. 9(2) (ILA
s. 39B(1)).

S. 135(1)
amended by
No. 36/2011
s. 9(1).

S. 135(2)
inserted by
No. 36/2011
s. 9(2).

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- (b) if an address under paragraph (a) is not known or if a notice sent to that address is returned, in any other manner VCAT considers appropriate.

Note

See section 148. See also section 113(2) of the **Transfer of Land Act 1958**.

136 Advice to occupiers

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

- (a) copy of the rules of the owners corporation at the commencement of occupation; and
- (b) copy of the consolidated rules of the owners corporation as soon as possible after it is lodged with the Registrar.

137 Duties of occupiers of lots

An occupier of a lot—

- (a) must comply with this Act and the regulations under this Act and the rules of the owners corporation; and
 - (b) must not use or neglect the common property or permit it to be used or neglected in a manner that is likely to cause damage or deterioration to the common property.
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PART 8—RULES OF THE OWNERS CORPORATION

138 Power to make rules

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

Note

Rules may be made on the registration of the relevant plan under Part 5 of the **Subdivision Act 1988**. See section 27E.

138A Power to make rules regarding proxies

- (1) Subject to subsection (2), an owners corporation may make a rule requiring that a majority of the members of the committee of the owners corporation consent to a proxy of a member (authorised under section 87) voting at committee meetings.
- (2) A rule made under subsection (1) only applies if the proxy-holder has not been elected or co-opted as a member of the committee.
- (3) If a rule under subsection (1) is in effect, the consent must not be unreasonably withheld.

139 Model rules

- (1) The regulations may prescribe model rules in relation to any matter in respect of which rules can be made.
- (2) If the owners corporation does not make any rules or revokes all of its rules, then the model rules apply to it.

S. 138A
inserted by
No. 36/2011
s. 10.

- (3) If the model rules provide for a matter and the rules of the owners corporation do not provide for that matter, the model rules relating to that matter are deemed to be included in the rules of the owners corporation.

140 Rules to be of no effect if inconsistent with law

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

- (a) unfairly discriminates against a lot owner or an occupier of a lot; or
- (b) is inconsistent with or limits a right or avoids an obligation under—
 - (i) this Act; or
 - (ii) the **Subdivision Act 1988**; or
 - (iii) the regulations under this Act; or
 - (iv) the regulations under the **Subdivision Act 1988**; or
 - (v) any other Act or regulation.

141 Who is bound by the rules?

The rules of an owners corporation are binding on—

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

142 Recording of rules

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

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- (2) If an owners corporation amends any rules under this Act, the owners corporation must lodge with the Registrar a consolidated copy of the rules (incorporating the amendment) that has been certified by the secretary of the owners corporation.
 - (3) The Registrar must record the rules in the Register kept under the **Transfer of Land Act 1958**.
 - (4) A rule takes effect—
 - (a) on the day that the rule is recorded by the Registrar in the Register; or
 - (b) on a later date specified in the rules.
 - (5) An amendment to a rule takes effect—
 - (a) on the day that the consolidated rules (incorporating the amendment) is recorded by the Registrar in the Register; or
 - (b) on a later date specified in the consolidated rules.

143 Rules to be given to lot owners

An owners corporation must ensure that—

- (a) a copy of the rules of the owners corporation is given to each lot owner as soon as practicable after the rules are lodged with the Registrar; and
 - (b) if the rules are amended, a copy of the consolidated rules (incorporating the amendment) is given to each lot owner as soon as practicable after the consolidated rules are lodged with the Registrar.
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PART 9—RECORDS

Division 1—Keeping of records

144 Keeping of records

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

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

(s) leases and licences from the owners corporation.

145 How long must records be kept?

- (1) An owners corporation must keep voting papers and ballots for 12 months after the vote or ballot is taken.
- (2) An owners corporation must keep proxies for 12 months after they expire or are revoked.
- (3) An owners corporation must keep all other documents of a kind set out in section 144 for at least 7 years.

146 Availability of records

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

Division 2—Owners corporation register

147 Owners corporation register

- (1) The applicant for registration of a plan of subdivision that provides for the creation of an owners corporation must establish an owners corporation register.

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- (2) An owners corporation existing on the date of commencement of this section must establish an owners corporation register within the time prescribed by the regulations.
 - (3) An owners corporation must maintain the owners corporation register.

148 What must be kept on the owners corporation register?

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

- (a) the owners corporation plan number and address;
- (b) the name and address of each lot owner;
- (c) the name of the manager, registration number of the manager and contact details of the manager (if any);
- (d) total lot liability and total lot entitlements;
- (e) lot liability and lot entitlements for each lot affected by the owners corporation;
- (f) the basis for the setting of lot liability and lot entitlement (if available);
- (g) the date of each amendment to the owners corporation rules and the date of the recording of the consolidated rules (incorporating the amendment) in the Register kept under the **Transfer of Land Act 1958**;
- (h) details of any notices or orders served on the owners corporation by a court or tribunal or under an Act;
- (i) details of contracts, leases and licences entered into by the owners corporation;

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- (j) details of the insurance policies taken out by the owners corporation including—
- (i) the name of the insurance company;
 - (ii) the number of the insurance policy;
 - (iii) the nature of the risk insured;
 - (iv) the amount of insurance;
 - (v) the due date of the premium;
 - (vi) the date that the premium was last paid.

149 In what form must the register be kept?

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

Note

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

150 Availability of register

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

S. 150(2)
amended by
No. 1/2010
s. 39.

Division 3—Owners corporation certificate

151 Owners corporation certificate

- (1) Any person may apply to the owners corporation for an owners corporation certificate.
- (2) The application must be in writing and must be accompanied by the fee determined by the owners corporation, which must not exceed the prescribed fee.

S. 151(2)
amended by
No. 2/2008
s. 18.

Note

The **Electronic Transactions (Victoria) Act 2000** enables this application to be made electronically.

- (3) The owners corporation must issue an owners corporation certificate within 10 business days after it receives an application and fee under this section.
- (4) An owners corporation certificate must—
 - (a) contain the prescribed information relating to the owners corporation and a lot which must include the prescribed information relating to—
 - (i) fees payable in respect of the lot;
 - (ii) fees and charges that are imposed or proposed to be imposed on the lot;
 - (iii) fees and other money owing in respect of the lot;
 - (iv) insurance;
 - (v) repairs and maintenance;
 - (vi) the funds held by the owners corporation;
 - (vii) liabilities and contingent liabilities of the owners corporation including any liabilities or contingent liabilities arising from legal proceedings;

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- (viii) contracts, leases, licences and agreements affecting the common property;
 - (ix) services provided to lot owners and occupiers and the public;
 - (x) notices and orders served on the owners corporation;
 - (xi) legal proceedings to which the owners corporation is a party;
 - (xii) the manager;
 - (xiii) any appointment of an administrator; and
- (b) be accompanied by—
- (i) a copy of the rules, or, if the rules have been amended the consolidated rules of the owners corporation as recorded on the Register; and
 - (ii) a statement in the prescribed form providing advice and information to prospective purchasers and lot owners; and
 - (iii) a copy of all resolutions made at the last annual general meeting of the owners corporation; and
 - (iv) any other documents of a prescribed kind; and
 - (v) a statement advising that further information on prescribed matters can be obtained by inspection of the owners corporation register; and

S. 151(4)(b)(v)
amended by
No. 1/2010
s. 40(1).

Owners Corporations Act 2006
No. 69 of 2006
Part 9—Records

s. 151

(c) be sealed with the owners corporation's
common seal.

S. 151(4)(c)
inserted by
No. 1/2010
s. 40(2).

PART 10—DISPUTE RESOLUTION

Division 1—Complaints and procedures

152 Complaints

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

153 Decision whether to take action in respect of alleged breach

- (1) This section applies if—
 - (a) a complaint is made under section 152; or
 - (b) it otherwise comes to the attention of the owners corporation that a lot owner or an occupier of a lot or a manager may have breached this Act or the regulations or the rules of the owners corporation.
- (2) The owners corporation must decide—
 - (a) to take action under this Part in respect of the alleged breach; or
 - (b) to apply to VCAT for an order requiring the person to rectify the breach; or

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- (c) to take no action in respect of the alleged breach.
- (3) An owners corporation must not take action under this Part or apply to VCAT for an order in relation to an alleged breach unless—
- (a) the dispute resolution process required by the rules has first been followed; and
 - (b) the owners corporation is satisfied that the matter has not been resolved through that process.
- (4) The owners corporation must not take action against a person under this Part or apply to VCAT for an order in respect of an alleged breach unless it believes on reasonable grounds that the person has committed the alleged breach.
- (5) A decision under this Part cannot prevent the carrying out of an obligation under section 46 or 47 that is necessary to ensure safety or to prevent significant loss or damage.

154 Notice of decision not to take action

- (1) If an owners corporation decides not to take action under this Part or to apply to VCAT for an order in respect of an alleged breach, it must give notice of the decision to any person who made a complaint under section 152 in respect of the alleged breach.
- (2) The notice must set out the reasons for the decision.

155 Notice to rectify breach

- (1) If the owners corporation decides to take action under this Part in respect of an alleged breach, it must give notice of the allegation to the person alleged to have committed the breach.

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

156 What if the person does not rectify the breach?

- (1) If the person to whom notice is given under section 155 does not rectify the breach within 28 days after the date of the notice under section 155, the owners corporation may decide—
 - (a) to give the person more time to comply with the notice; or
 - (b) to give the person a final notice; or
 - (c) not to proceed with the action under this Part.
- (2) If the owners corporation decides to give the person more time to comply with the notice under section 155, it must give the person notice of that decision setting out the additional time for compliance.
- (3) If the owners corporation gives a person more time to comply with the notice under section 155 and the person does not comply within that time, the owners corporation may decide—
 - (a) to give the person a final notice; or
 - (b) not to proceed with the action under this Part.

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- (4) The owners corporation must give notice of its decision under this section to—
- (a) any person who made a complaint in respect of the alleged breach under section 152; and
 - (b) the person to whom the notice was given under section 155.

157 Final notice

- (1) If the owners corporation decides to give a final notice, the notice must—
- (a) be in writing in the approved form; and
 - (b) state that the person must within 28 days after the date of the notice rectify the breach; and
 - (c) state that if the breach is not rectified within that time, the owners corporation may decide to apply to VCAT for an order requiring the rectification of the breach.
- (2) If the person who is given a final notice fails to rectify the breach within the required time, the owners corporation may decide—
- (a) to apply to VCAT for an order requiring the rectification of the breach; or
 - (b) to take no further action in respect of the breach.
- (3) The owners corporation must give notice of its decision under this section to—
- (a) the person to whom the notice was given under subsection (1); and
 - (b) any person who made a complaint under section 152 in respect of the alleged breach.

Note

See Part 11 for applications to VCAT.

158 How may notice be given?

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

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

159 Report to annual general meeting

- (1) The owners corporation must report to the annual general meeting in relation to—
 - (a) the number of complaints made under this Division; and
 - (b) the nature of the complaints; and
 - (c) the number of matters on which action was taken under this Division; and
 - (d) the nature of the matters in respect of which action was taken; and
 - (e) the number of matters in respect of which an application was made to VCAT in respect of an alleged breach of an obligation imposed on a lot owner or occupier of a lot by this Act or the regulations or the rules of the owners corporation; and

- (f) the nature of the matters referred to in paragraph (e); and
 - (g) the outcome of each action or application.
- (2) The report must not identify the person who made a complaint or the lot owner or occupier alleged to have committed the breach.

Division 2—Powers of Director

160 Making a complaint

- (1) Any person may complain to the Director about any matter that the Director has power to refer to conciliation under section 161.
- (2) A person may complain to the Director in writing.
- (3) The Director may ask a person who has made a complaint to give more information about the complaint within the time fixed by the Director.
- (4) A person who has made a complaint must give his or her name to the Director and such other information relating to his or her identity as the Director may require.

161 Conciliation and mediation

- (1) The Director may refer to a consumer affairs employee for conciliation or mediation any dispute (which is reasonably likely to be settled) between any of the following that arises in relation to the operation of the owners corporation—
 - (a) a current or former lot owner;
 - (b) mortgagee of a lot;
 - (c) an insurer;
 - (d) an occupier of a lot;
 - (e) a purchaser of a lot;
 - (f) a manager of an owners corporation.

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- (2) Subsection (1) does not apply to a dispute under section 103(4) of the **Fair Trading Act 1999**.
- (3) If the whole or any part of a dispute under subsection (1) falls within the jurisdiction of any prescribed person or body, the Director must refer the dispute, or that part of the dispute, to the person within whose jurisdiction it falls.
- (4) Subsection (1) applies whether or not a person has made a complaint.
- (5) In this section—
consumer affairs employee means any person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.
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PART 11—APPLICATIONS TO VCAT

Division 1—Owners corporation disputes

162 VCAT may hear and determine disputes

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

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

163 Who may apply to VCAT in relation to a dispute?

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

s. 164

S. 163(1A)
inserted by
No. 36/2011
s. 11.

- (1A) A lot owner may apply to VCAT on behalf of an owners corporation to resolve an owners corporation dispute.

Note

This subsection clarifies that the rule in *Foss v Harbottle* (1843) 67 ER 189 does not apply to owners corporation disputes.

- (2) An application to VCAT by the owners corporation for an order requiring a lot owner to pay an amount payable by the lot owner to the owners corporation can only be made if the amount is not paid within 28 days after the final notice is given under section 32.

164 VCAT may dismiss application

VCAT may make an order dismissing or striking out an application by an owners corporation for an order requiring the rectification of a breach referred to in section 153 if it is satisfied that the owners corporation has not complied with that section.

165 What orders can VCAT make?

- (1) In determining an owners corporation dispute, VCAT may make any order it considers fair including one or more of the following—
- (a) an order requiring a party to do or refrain from doing something;
 - (b) an order requiring a party to comply with this Act or the regulations or the rules of the owners corporation;
 - (ba) an order authorising a lot owner to institute, prosecute, defend or discontinue specified proceedings on behalf of the owners corporation;

S. 165(1)(ba)
inserted by
No. 36/2011
s. 12.

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- (c) an order for the payment of a sum of money—
 - (i) found to be owing by one party to another party;
 - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
 - (iii) by way of restitution;
 - (d) an order varying any term of a contract or agreement;
 - (e) an order declaring that a term of a contract or agreement is, or is not, void;
 - (f) an order declaring—
 - (i) the terms of a delegation; or
 - (ii) the meaning of a rule of the owners corporation;
 - (g) if an owners corporation is required under this Act to have a committee and a committee has not been appointed at or immediately after the first annual general meeting, an order appointing a committee of the owners corporation;
 - (h) an order appointing (with the person's consent) or revoking the appointment of—
 - (i) the chairperson of the owners corporation;
 - (ii) the secretary of the owners corporation;
 - (iii) a member of a committee or sub-committee of the owners corporation;

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- (i) an order—
- (i) appointing a person (with the person's consent) as manager of the owners corporation, on specified terms and conditions;
 - (ii) revoking the appointment of a manager of an owners corporation;
 - (iii) imposing conditions or restrictions on the management by a manager of the owners corporation;
- (j) an order in relation to damaged or destroyed buildings or improvements;
- (k) an order as to the payment of insurance money under any policy taken out by an owners corporation;
- (l) an order requiring an order to be recorded in the owners corporation register, the register of managers or in the Register kept under the **Transfer of Land Act 1958**;
- (m) an order requiring the Registrar to amend the Register.
- (2) In awarding damages in the nature of interest, VCAT may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate it thinks appropriate.
- (3) VCAT may make any interim orders and ancillary orders it thinks fit in relation to an owners corporation dispute.

Note

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

166 Penalty for breach of rules

If VCAT determines that a person has failed to comply with a rule of the owners corporation that imposes an obligation that is binding on the person, VCAT may make an order imposing a civil penalty not exceeding \$250.

Note

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

167 What must VCAT consider?

VCAT in making an order must consider the following—

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

168 Monetary orders

- (1) If VCAT makes an order under section 165 relating to the payment of money by the owners corporation, it may by order—
 - (a) direct that any money (including expenses and costs) payable must be paid from contributions levied in relation to the lots and in the proportions specified in the order; and

- (b) direct the owners corporation to levy contributions in accordance with the order; and
 - (c) prohibit the owners corporation from levying a contribution from another party to the dispute.
- (2) If VCAT makes an order under section 165 relating to the payment of money by a manager, it may by order prohibit the manager from seeking or enforcing an indemnity from the owners corporation or any other party.

169 Notice to Business Licensing Authority

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

Division 2—Exemption orders

170 Owners corporation may apply to VCAT for exemption

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

- (a) compliance with a requirement under this Act to include a lot owner's name in the owners corporation register;
- (b) a requirement under this Act to hold insurance, where an appropriate insurance policy cannot be obtained on reasonable terms;
- (c) a requirement under this Act to have a unanimous resolution;
- (d) a prescribed provision of this Act or the regulations in the prescribed circumstances.

171 VCAT may make exemption order

- (1) On an application under section 170, VCAT may by order exempt the applicant from the requirement for which the exemption is sought.
- (2) An exemption must only be granted on a ground in section 170(a) if VCAT is satisfied that exceptional circumstances exist.
- (3) An exemption on the ground in section 170(b) must be granted only for a specified period (not exceeding the prescribed period).
- (4) An exemption must only be granted on the ground in section 170(c) if the vote in favour of the resolution is at least 75% of the total votes for all the lots affected by the owners corporation and there are no votes against the resolution.

Division 3—Restriction of access to records

172 Application to VCAT to restrict access to information

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

Division 4—Appointment of administrator

173 Application for appointment of administrator

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

174 Appointment of administrator

On an application under section 173, VCAT may—

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

175 Remuneration of administrator

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

176 Powers and responsibilities of administrator

An administrator—

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

177 Administrator to act in good faith

An administrator in carrying out any functions and powers conferred by or under this Act or the **Subdivision Act 1988**—

- (a) must act honestly and in good faith; and
 - (b) must exercise due care and diligence.
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PART 12—REGISTRATION OF MANAGERS

Division 1—Managers to be registered

178 Offence to act as manager without being registered

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

Penalty: 60 penalty units.

179 Eligibility for registration

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

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

180 Application for registration

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

S. 180(2)(a)
amended by
No. 2/2008
s. 19.

(b) accompanied by evidence as to the identity of—

(i) the applicant; or

(ii) if the applicant is a corporation, the directors of the corporation—

by means of a birth certificate, passport (if the passport is current or expired for not more than 2 years), driver licence or any other document in one of the prescribed categories; and

(c) accompanied by evidence that the applicant is covered by the required professional indemnity insurance; and

(d) accompanied by the prescribed fee.

181 Further information

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

182 Registration

(1) The Business Licensing Authority must register the applicant under this Part if it is satisfied that the applicant—

(a) is eligible to be registered under this Part; and

(b) has complied with sections 180 and 181.

(2) A registration remains in force until it is cancelled or surrendered.

183 Annual registration fee and statement

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

184 Extension of time

- (1) On payment of the prescribed fee (if any), a person may apply to the Business Licensing Authority for an extension of time, or a further extension of time, in which to comply with section 183.
- (2) The Business Licensing Authority may grant the application if it is made before the date in relation to which the extension is sought.

185 Failure to lodge annual statement

- (1) If a registered manager fails to comply with section 183, the Business Licensing Authority must give the manager a written notice stating that unless the manager complies with that section and also pays to the Business Licensing Authority the prescribed late payment or lodgement fee by the date specified in the notice, the manager's registration will be cancelled.
- (2) The date specified in the notice must be at least 14 days after the date on which the notice is given to the manager.
- (3) If the manager has not complied with section 183 and paid the late payment or lodgement fee by the date specified in the notice, the registration is automatically cancelled.

186 Automatic cancellation of registration

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

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

187 Death, disability etc. of registered manager

- (1) The following persons may carry on the management business of a person who was registered under this Part for 60 days after the person ceases to be registered—
 - (a) if the person dies, the executor named in the person's will or the administrator of the person's estate or any person who intends applying for letters of administration in relation to the person's estate;
 - (b) if the person becomes an insolvent under administration, the assignee, trustee or receiver of the person;
 - (c) if the person becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**, the guardian or administrator of the person or any person nominated by the guardian or administrator;
 - (d) if the person becomes an externally-administered body corporate, the liquidator, official manager, receiver, receiver and manager or other external administrator.
- (2) If a person authorised to carry on a business applies to the Business Licensing Authority within the 60 day period for permission to carry on the business for a longer period, the person may continue to carry on the business until the Authority makes a decision on the application.
- (3) The Business Licensing Authority may grant an application if it is satisfied that it is not contrary to the public interest to do so.
- (4) In granting its permission, the Authority may limit it in any way it thinks appropriate and may impose any conditions it thinks appropriate to ensure the ongoing protection of the public interest.

- (5) A person who carries on a management business under this section is deemed to be a registered manager for the purposes of this Act.

188 If details given in application or annual statement change

If, before a decision is made under section 182 to register a person as a manager or while a registration is in force, a material change occurs in any of the details provided in the application for registration or in the last statement lodged by a person under section 183, the person must give the Business Licensing Authority written details of the change within 14 days after the person becomes aware of the change.

Penalty: 10 penalty units.

189 Offence to supply false or misleading information

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

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

Penalty: 60 penalty units.

190 Cancellation of registration if false information is given

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

191 Application for review

- (1) A person whose interests are affected by a decision of the Business Licensing Authority under this Act may apply to VCAT for a review of the decision.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 2—Register of managers

192 Register of managers

The Licensing Registrar must keep a register of managers in the form determined by the Licensing Registrar.

193 Purposes of register of managers

The purposes of keeping the register of managers are—

- (a) to enable lot owners and members of the public to have access to information about registered managers; and
- (b) to record details of the professional indemnity insurance held by registered managers; and

- (c) to provide the Director and the Business Licensing Authority with information enabling them to contact registered managers to inform them of changes in legal requirements affecting them; and
- (d) to provide the Director and the Business Licensing Authority with information in relation to owners corporations managed by a registered manager to enable them to contact the owners corporations in relation to the activities of the manager.

194 What must the register of managers contain?

The register of managers must contain information that is available to the Business Licensing Authority on the following in relation to each person registered as a manager under this Part—

- (a) the registration number issued by the Business Licensing Authority;
- (b) the name of the person;
- (c) if the person is a natural person, the person's address for service, telephone number and email address (if any);
- (d) if the person is a corporation—
 - (i) the corporate name (including the ACN);
 - (ii) the address of its registered office or its address for service if this is different from its registered office;
 - (iii) the telephone number and email address (if any);
 - (iv) the name of each director of the corporation;

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- (e) all business names under which the person carries on a management business;
 - (f) the Australian Business Number (if any) issued under the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth issued to the person;
 - (g) the Internet site address maintained by the person for the purposes of the management business (if any);
 - (h) current details of the professional indemnity insurance held by the person;
 - (i) any orders of VCAT under this Act relating to the person as a manager, including orders for appointment or removal of the person as manager;
 - (j) any undertakings given to the Director under this Act or the **Fair Trading Act 1999**;
 - (k) the date of grant, surrender or cancellation of registration;
 - (l) any other prescribed information.

195 Inspection of register of managers

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

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

196 Removal of information from register of managers

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

197 Duty of Licensing Registrar

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

Division 3—General

198 Provision of information for the purposes of this Act

Despite anything to the contrary in section 18 of the **Business Licensing Authority Act 1998**, for the purposes of determining compliance with this Act and for carrying out the functions of the Business Licensing Authority or the Director under this Act—

- (a) the Authority may disclose to the Director, any information collected in the course of carrying out the Authority's functions under this Act; and
- (b) the Director may disclose to the Authority any information collected in the course of carrying out the Director's functions under this Act.

199 Application of Fair Trading Act 1999

- (1) Part 10 of the **Fair Trading Act 1999** (except sections 120, 121 and 130) extends and applies (with any necessary modifications) to this Part as if any reference in that Part 10 to the **Fair Trading Act 1999** were a reference to this Part.

S. 199(3)
amended by
No. 72/2010
s. 48(Sch.
item 17).

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- (2) Sections 106HA, 143 and 144 and Division 2 of Part 11 (except section 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Part as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Part.
- (3) For the purposes of subsection (2), section 153 of the **Fair Trading Act 1999** applies as if a reference in that section to Part 2A or 6 of the **Fair Trading Act 1999** were a reference to this Part.
- (4) For the purposes of subsection (2), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
- (a) proceedings for an offence against a provision of this Part (except an offence applied by subsection (1)); or
 - (b) proceedings on an application for an injunction under section 149, 149A or 150 of the **Fair Trading Act 1999** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Part (except an offence applied by subsection (1)); or
 - (c) proceedings on an application for an order under section 158, or for damages under section 159 of the **Fair Trading Act 1999** (as applied by subsection (2)).
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PART 13—GENERAL

200 Approved forms

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

201 Money to be paid to Victorian Property Fund

The following money must be paid into the Victorian Property Fund under the **Estate Agents Act 1980**—

- (a) all fees payable to the Authority under this Act;
- (b) all penalties (including civil penalties) payable under this Act.

202 Certain provisions of contracts void

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

203 Who may bring proceedings for offences?

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

S. 203A
inserted by
No. 63/2010
s. 62.

203A Infringement notices

- (1) An authorised officer may serve an infringement notice on any person who the officer has reason to believe has committed an offence against this Act that is prescribed for the purposes of this subsection.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence prescribed for the purposes of subsection (1) is the prescribed infringement penalty.
- (4) In this section *authorised officer* means—
 - (a) an inspector;
 - (b) a member of the police force;
 - (c) a person authorised in writing by the Director.

204 Regulation-making powers

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) regulating and requiring the taking out of insurance by an owners corporation and lot owners of an owners corporation including but not limited to—
 - (i) prescribing terms to be contained in insurance policies in relation to lots or common property; and
 - (ii) requiring the noting of mortgagees' interests on insurance policies taken out by owners corporations; and

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- (iii) prescribing the manner of indexing the sum insured for any particular class of insurance; and
 - (iv) prescribing approved insurers;
 - (b) requiring documents or information required to be kept under this Act to be lodged with the Registrar of Titles;
 - (c) requiring records or registers to be kept and prescribing the content and manner of keeping records or registers under this Act or the regulations;
 - (d) prescribing model rules for the purposes of this Act;
 - (e) providing for any other matter that is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.
- (2) The regulations may—
- (a) differ according to differences in time, place and circumstance; and
 - (b) leave any matter to be determined by the Director or the Authority.
- (3) The regulations may apply, adopt or incorporate any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
- (a) wholly or partially or as amended by the regulations; or
 - (b) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.

Owners Corporations Act 2006
No. 69 of 2006
Part 13—General

s. 205

S. 205
(Heading)
amended by
No. 36/2011
s. 13(1).

205 Transitional and savings provisions

Schedule 2 has effect.

Pt 14
(Heading and
ss 206–216)
amended by
No. 2/2008
s. 20,
repealed by
No. 1/2010
s. 92.

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Pt 15
(Heading and
ss 217–219)
repealed by
No. 1/2010
s. 92.

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Pt 16
(Heading and
ss 220–224)
amended by
No. 2/2008
s. 21,
repealed by
No. 1/2010
s. 92.

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SCHEDULES

SCHEDULE 1

Section 138(1)

POWER TO MAKE RULES OF OWNERS CORPORATION

1 Health, safety and security

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

2 Committees and sub-committees

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

3 Management and administration

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

4 Use of common property

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

5 Lots

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

6 Design

Design, construction and landscaping.

7 Behaviour of persons

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

8 Dispute resolution

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

9 Notices and documents

9.1 Notices, noticeboards and advertising.

9.2 Fees for provision of copies of rules, records and owners corporation register.

9.3 Notices about fees and charges.

10 Common seal

The use of the common seal of the owners corporation.

SCHEDULE 2

Section 205

Sch. 2
amended by
No. 36/2011
s. 13(2)(3).

TRANSITIONAL AND SAVINGS PROVISIONS

1 Definitions

In this Schedule—

commencement day means the day on which section 211 of the new Act comes into operation;

Subdivision Act means **Subdivision Act 1988**;

subdivision body corporate has the same meaning as body corporate has in the Subdivision Act as in force immediately before the commencement day;

Subdivision Regulations means the Subdivision (Body Corporate) Regulations 2001;

new Act means **Owners Corporations Act 2006**.

2 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) This Schedule applies despite anything to the contrary in any other provision of the new Act.

3 Subdivision bodies corporate deemed to be owners corporations

On and from the commencement day, a subdivision body corporate is deemed to be an owners corporation within the meaning of the Subdivision Act as amended by the new Act and to be the same body despite that change.

4 References to subdivision bodies corporate

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act), or in any instrument made under any Act or in any other document of any kind, a reference to a subdivision body corporate (however described) must be read as a reference to an owners corporation.

5 Rules of body corporate

Any rules of a subdivision body corporate in force immediately before the commencement day, continue in force on and after that commencement and are deemed to be rules of the owners corporation under the new Act to the extent that they are not inconsistent with the new Act or the regulations under the new Act.

6 Body corporate certificate

A body corporate certificate issued under the Subdivision Regulations and existing immediately before the commencement day is deemed to be an owners corporation certificate under the new Act.

7 Committees

A committee or sub-committee of a body corporate under the Subdivision Regulations and existing immediately before the commencement day is deemed on that commencement to be a committee or sub-committee established by the relevant owners corporation under the new Act.

8 Resolutions

- (1) A resolution of a body corporate in force immediately before the commencement day continues in force (until amended or revoked) to the extent that it is not inconsistent with the new Act or the regulations under the new Act or the Subdivision Act as amended by the new Act.

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- (2) A postal ballot commenced under the Subdivision Regulations but not completed before the commencement day may be completed on or after the commencement day despite anything to the contrary in this Act and any resolution resulting from that postal ballot takes effect as a resolution of the owners corporation to the extent that it is not inconsistent with the new Act or the regulations under the new Act or the Subdivision Act as amended by the new Act.
- (3) Any delegation made by a subdivision body corporate and existing immediately before the commencement day continues in force as a delegation under the new Act until—
- (a) if it is inconsistent with the new Act, the first annual general meeting of the owners corporation after the commencement day;
and
 - (b) in any other case, it is revoked by the owners corporation under the new Act.

9 Managers

- (1) Despite section 178, a person who was a manager of a subdivision body corporate for fee or reward immediately before the commencement day may continue to act as the manager of an owners corporation for the period of 3 months after the commencement day without being registered under Part 12.
- (2) Despite section 178, a person who was a manager of a subdivision body corporate for fee or reward immediately before the commencement day and who applies to the Business Licensing Authority, before the end of the period of 3 months after the commencement day, for registration under Part 12 may, without being registered under Part 12, continue to act as the manager of an owners

corporation until the application is finally determined.

10 Administrators

Any administrator of a subdivision body corporate appointed by the Supreme Court or the County Court under section 38 of the Subdivision Act before its repeal by the new Act continues as administrator of the owners corporation and for that purpose section 38 continues to apply despite its repeal.

11 Transitional regulations

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.
- (2) Regulations under this clause may have retrospective effect to a day on or after the day on which this Act receives Royal Assent.
- (3) Regulations under this clause have effect despite anything to the contrary in any Act (other than this Act) or in any subordinate instrument.

12 Saving of certain delegations

A delegation under section 11 is not invalid merely because of the commencement of section 5 of the **Consumer Acts Amendment Act 2011**.

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Sch. 3
(Heading and
cls 1–13)
amended by
No. 2/2008
s. 22,
repealed by
No. 1/2010
s. 92.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 20 July 2006

Legislative Council: 12 September 2006

The long title for the Bill for this Act was "to provide for the management, powers and functions of owners corporations and for appropriate mechanisms for the resolution of disputes relating to owners corporations, to amend the **Subdivision Act 1988** in relation to the creation of owners corporations, to amend other Acts and for other purposes."

The **Owners Corporations Act 2006** was assented to on 19 September 2006 and came into operation on 31 December 2007: section 2(2).

2. Table of Amendments

This Version incorporates amendments made to the **Owners Corporations Act 2006** by Acts and subordinate instruments.

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: Ss 12–22 on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010 (as amended by Nos 63/2010, 36/2011)

Assent Date: 9.2.10
Commencement Date: Ss 28, 29, 92 on 1.8.10: Government Gazette 22.7.10 p. 1628; ss 21–27, 30–32, 34, 35, 37–40 on 1.1.11: Government Gazette 14.10.10 p. 2404; s. 36 on 1.9.11: s. 2(5); s. 33 never proclaimed, repealed by No. 36/2011 s. 35(1)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: S. 62 on 1.11.10: Government Gazette 14.10.10 p. 2404; s. 77(3) on 1.1.11: Government Gazette 14.10.10 p. 2404; s. 77(1)(2) never proclaimed, repealed by No. 36/2011 s. 26
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 17) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Consumer Acts Amendment Act 2011, No. 36/2011

Assent Date: 23.8.11
Commencement Date: Ss 5–14 on 24.8.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Owners Corporations Act 2006**

Endnotes

3. Explanatory Details

No entries at date of publication.