

## LEGAL UPDATE

### Tisher Liner FC Law's update on the amendments to the Owners Corporations Act

The Owners Corporations and Other Acts Amendment Act 2021 has now passed Victorian Parliament and will take effect from 1 December 2021. Expert Owners Corporations lawyers, Tisher Liner FC Law, explain the changes to the Owners Corporations Act 2006.

#### What does the Act try to achieve?

The Act amends the Owners Corporations Act 2006 as follows:

1. to provide for five tiers of owners corporations that allow for the degree of regulation of owners corporations to be based on the number of occupiable lots; and
2. to remove the requirement for owners corporations to have a common seal; and
3. to allow owners corporations to levy fees to cover the premiums for reinstatement and replacement insurance or for any excess amount on an insurance claim; and
4. to allow owners corporations to dispose of goods abandoned on the common property; and
5. to provide for what may be disclosed at the first meeting of an owners corporation; and
6. to amend the duties of members of committees and sub-committees of owners corporations; and
7. to further restrict the circumstances in which a person with a criminal record may be registered as the manager of an owners corporation; and
8. to insert new duties of managers of owners corporations relating to contracts for goods or services, money held on behalf of owners corporations on trust and the obligation to disclose beneficial relationships with suppliers of goods or services; and
9. to provide for owners corporations incorporated in respect of land used or to be used for the purposes of a retirement village; and
10. to empower VCAT to make orders—
  - a. that authorise lot owners to commence, prosecute, defend or discontinue any proceeding on behalf of owners corporations; or
  - b. to require lot owners to pay the reasonable costs of owners corporations; and
11. to amend the Subdivision Act 1988—
  - a. to specify how lot liability and lot entitlement must be allocated; and
  - b. to require an initial owner to engage a surveyor to set out the initial allocation of lot liability and lot entitlement.

#### **What are the new tiers?**

Owners Corporations will have different obligations depending on what tier they are in. The tiers are:

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

An example of a services only owners corporation would be a limited owners corporation that deals with the provision of lifts.

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

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

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

## How will this improve life for Lot owners?

Some of the changes include:

### **Exemptions for Tier 5 OCs**

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

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

### **Making it easier to execute documents**

OCs no longer need a common seal if they don't want one.

Documents can be signed by two lot owners authorised by the OC. OC's need to resolve by ordinary resolution that a common seal is no longer required and can be destroyed.

### **Water**

Confirming that if water falls on common property, it is deemed to be part of the common property allowing lot owners to take action against an Owners Corporation for flows of water from common property.

### **Legal Proceedings**

Legal proceedings for claims up to \$100,000 can now proceed when the Owners Corporation resolves to do so by ordinary resolution. Currently, a special resolution is required to issue proceedings (other than for levy recovery or breach of rules).

The changes will make it easier to issue proceedings, particularly when there are Owners Corporations with a large number of lot owners who may be disinterested in any action.

### **Benefit Principle can apply to Annual Fees**

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

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

### **Insurance Costs**

Owners corporations can pass on insurance excess to individual lots owners in certain circumstances.

### **Audits**

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

### **Maintenance Plans**

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

### **Removal of Goods**

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

### **Developers and appointments of managers and contracts**

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

### **Developers and their initial obligations**

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

### **Managers may pass interim resolutions**

The Act will allow managers to pass interim resolutions on some matters where if no lot owner is present at the meeting ensuring that managers can ensure that owners corporations can function. A common example of this might be the manager resolving to obtain insurance in circumstances where insurance is about to expire.

### **Interim resolutions**

If a general meeting of an owners corporation has a quorum and the special resolution is not passed with the requisite number of votes, but there are no votes against the resolution, then the resolution will be taken to be an interim resolution. This will make it easier for larger owners corporations to make decisions where there are large numbers of lot owners who don't turn up to meetings.

### **Committees**

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

### **Rules**

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

- to protect the quiet enjoyment of all other lots and the common property during those works; and
- to protect the structural integrity of any building on the plan of subdivision from those works; and
- to ensure the market value of any other lot does not decrease as a result of those works.

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

### **Occupiers and Guests**

Occupiers will be responsible for a guests' behaviour.

## VCAT Orders

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

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

## Summary

The amendments attempt to make Owners Corporations easier to operate, particularly where there are large number of lot owners who are not interested in taking part in the owners corporation. It also tries to bring some formality to the obligations of managers and to stamp out the practice by some managers of secretly profiting from owners corporations without full disclosure. Whilst the amendments might not go as far as some would have liked, they do help to bridge the gap and address some of the key concerns that lot owners have had difficulty with under the current legislative regime. Of note, lot owners will be pleased with their ability to have additional protections from initial developer owners as well as the ability to institute legal proceedings against builders when there are building defects by interim special resolutions.



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Phillip Leaman, principal of the Owners Corporations practice group of Tisher Liner FC Law and his very experienced team can provide assistance to owners corporations, committees, lot owners and managers in a range of owners corporations legal matters including:

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

We believe Owners Corporations want to maintain peaceful, functional living environments for owners. Our mission is to provide a fresh perspective on resolving legal disputes and to inspire Owners Corporations to achieve outcomes that preserves the value of assets and restores harmony. We are expert Owners Corporations lawyers.

For advice or assistance, please contact Phillip Leaman.

See our website for more information on Owners Corporations as well as a range of helpful blogs and podcasts.