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REFORMS TO THE OWNERS CORPORATIONS ACT 2006

The Owners Corporations Act came into force on 31 December 2007 setting out the duties and powers of owners corporations ('OCs').

An owners corporation (formerly body corporate) manages the common property of a residential, commercial, retail, industrial or mixed-use property development. You are likely to be a member of an owners corporation if you own a flat, apartment or unit.

The Act was recently amended to include a new five tier system with each level having its own requirements, new 'hiring and firing' powers, increased obligations and registration requirements for managers and new rules, duties and voting rights for committees.

WHAT'S INSIDE THIS ARTICLE:

Reforms to the Owners Corporations Act from 1 December 2021:

- A new 5 tier system;

- Changes to improve the quality of owners corporation managers; and

- Committee rules, duties and voting rights.

NEW FIVE-TIER SYSTEM FOR OWNERS COPORATIONS

HOW WILL IT WORK?

The new tier system establishes different requirements for committees, financial reporting and maintenance plans depending on the size and nature of the Owners Corporation.

FINANCIAL STATEMENTS

It is essential for Tier 1, 2 & 3 OCs to prepare and present annual financial statements at its annual general meeting. If an OC levies annual fees in any financial year and it is a Tier 4 OC, then it must also prepare annual financial statements for that year.

FINANCIAL STATEMENT AUDITS

At the end of every financial year, OCs must have their financial statements audited based on their specific tier.
Tier 1 OCs must have a registered or authorised auditor or an accredited accountant audit their financial statements.
Tier 2 OCs can have an independent person who is a member of CPA Australia, CA Australia and New Zealand or the Institute of Public Accountants review their financial statements.
Either method can be chosen for Tier 3, 4 & 5 OC's.

The OC must be provided with a written report of the audit or review and this cannot be conducted by someone with either a direct or indirect personal or financial interest in the OC.

Tier	Definition
1	More than 100 occupiable lots (and not a services only OC)
2	51 to 100 occupiable lots (and not a services only OC)
3	10 to 50 occupiable lots (and not a services only OC)
4	3 to 9 occupiable lots (and not a services only OC)
5	2 lot subdivision or a services only OC

COMMITTEES

Tier 1, 2 and 3 OCs must elect a committee at the annual general meeting however this is optional for Tier 4 & 5.

MANAGERS

Tier 1 OCs must appoint a manager. They can opt out of this by special resolution.
A manager is not compulsory for Tiers 2, 3, 4 and 5 OCs but can be appointed.

MAINTENANCE FUNDS & PLANS

Tier 1 & 2 OCs must now prepare and approve a maintenance plan however this is optional for Tier 3, 4 & 5 OCs.
Tier 1 OCs have until 1 December 2022 to prepare and approve a plan, while tier 2 OCs have until 1 December 2023.
Any amendments to a maintenance plan can take place by ordinary resolution.

Read more about the changes HERE.

CHANGES TO IMPROVE THE QUALITY OF OWNERS CORPORATION MANAGERS

APPOINTMENT & REMOVAL

An OC manager can only be appointed for a maximum of 3 years.
If the OC fails to give notice of its intention to renew a contract of management, then it will be taken to have been renewed. The contract may then be terminated by the OC with at least 1 months' written notice.

Managers contracts cannot include terms that:

1. Require the OC, before it revokes the appointment of the manager, to:
   - pass a special resolution;
   - pass a unanimous resolution;
   - pass any other resolution; requiring more than a simple majority of votes;
   - convene a general meeting of the OC; or
   - take any other prescribed step.
2. Allow the manager to renew the contract of appointment at his or her discretion.
3. Require a tier 1 or 2 OC to give three months or more notice of its intention to revoke the appointment.
4. Require a tier 3, 4 or 5 OC to give one month or more notice of its intention to revoke the appointment.
5. Provide for the automatic renewal of the contract of appointment if the OC fails to give notice of its intention not to renew in accordance with its terms.
6. Restrict the ability of the OC to refuse to appoint a person as manager, other than a requirement that consent to appoint a person as manager must not be unreasonably withheld by the OC.

If these terms are added into a managers contract after 1 December 2021, they will be considered void.

DUTIES & OBLIGATIONS

Managers duties have now expanded. A manager must:
- ensure any goods and services they procure on behalf of the OC are competitively priced and/or procured under competitive terms.

- not exert pressure on any member of the OC to try and influence the outcome of a vote or election.

- give written notice to the OC chair disclosing any commission, payment or other benefit they are entitled to receive under a contract to supply goods or services to the OC.

A manager must disclose any beneficial relationship they have with a supplier of goods and services they propose to enter into a contract with on behalf of the OC. They must disclose this in writing to the OC chairperson as soon as they become aware of the beneficial relationship.

Upon request from an OC, OC managers must provide copies of financial statements for bank accounts that contain money they hold on trust on behalf of the OC, as soon as practicable.

REGISTRATION

Anyone who has been convicted or found guilty within the last 10 years is not eligible for registration as a manager if they were convicted for the below offences including:
- fraud, dishonesty, drug cultivation or trafficking;
- sexual slavery or servitude;
- child pornography or violence;
- A sexual offence or an offence connected with sex work;
- An offence committed outside Victoria that would constitute an offence referred to any of the examples above, if it was committed in this state.

If a person has committed one of these offences punishable by a prison term of 3 months or more at the time of conviction, they can apply to the Business Licensing Authority for permission to be a registered OC manager.

If a manager is convicted or found guilty of any of the above offences, then their registration will automatically be cancelled 30 days later.

OWNERS COPORATIONS COMMITTEE RULES, DUTIES AND VOTING RIGHTS

RULES

OCs have new powers to make rules on smoke drift, fire safety advice, payment of fees and sustainability items.

Smoke Drift
The development of a rule that regulates or prohibits the drifting of tobacco smoke from a specific lot to the common property such as stairs, hallways, lifts, foyers and driveways.

Fire Safety Advice
OCs can make rules that require advice to be given to occupiers about fire safety advice and emergency plans. If a lot is occupied by renters, the OC can rule that it is the lot owners responsibility to inform the renters of the fire safety procedures.

Payment of Fees
If lot owners are experiencing financial difficulty, the OC can make rules regarding fee instalment plans.

Sustainability
In order to protect the quiet enjoyment of all other lots and the common property, protect the structural integrity of any building on the plan of subdivision and
ensure the market value of any other lot does not decrease, OCs may make rules about renovations and alterations to the external appearance of a lot during renovation works.

However, if the lot owner is installing an item that eliminates or reduces reliance on non-sustainable energy sources, such as a solar hot water system or solar energy panels, then the OC cannot unreasonably prohibit this installation.

DUTIES

Members of committees and sub-committees also have new duties to:
- act honestly and in good faith;
- exercise due care and diligence;
- act in the interests of the owners corporation when performing their function; and
- not make improper use of their position to gain a direct or indirect advantage for themselves or anyone else.

Membership size
An OC committee must have between 3 & 7 members. If the OC would like between 7 & 12 members, this can be resolved by ordinary resolution.

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VOTING

Any votes cast in a ballot must be based on one vote for each lot for ordinary resolutions and one vote for each unit of lot entitlement for special and unanimous resolutions.

Voting can be by show of hands, a prescribed manner or any other way resolved at the meeting.

If a lot owner requires that a poll be taken before or after the vote is taken for an ordinary resolution, then the vote is based on one vote for each unit of lot entitlement.

An ordinary resolution is passed if a simple majority of votes cast at the meeting are in favour of the resolution. If there is a deadlock, a Chairperson who is a lot owner or authorised to vote on behalf of a lot owner as a proxy, has a casting vote. The vote will be deemed not to have passed if the Chairperson does not exercise that right.

Proxy Voting
A person must not vote as a proxy on a resolution at a meeting on behalf of more than one lot owner if there are 20 or less occupiable lots; or on behalf of more than 5 per cent of the lot owners if there are more than 20 occupiable lots.

These restrictions do not apply if the lot owners for whom the person is authorised to vote are members of the person’s family, or if other exceptions prescribed in the OC Regulations 2018 apply.