



OC Act Amendments 2021.

**The
Knight**

Insight, integrity
& results.



Key changes to the Owners Corporations Act.

04	Introduction.
05	Size of the Committee.
06	Proxies
07	Committee Proxies.
08	Owners Corporation Rules.
09	Renovation & External Appearance.
10	Health & Safety Rules.
11	Insurance excess & premiums.
12	Insurance valuations.
13	Public Liability Insurance.
14	Manager requirements.
15	Responsibilities of Managers.
16	Contract Terms.
17	Financial Auditing Requirements.
18	Changes to Ballots.
19	Commencing Legal Proceedings.
20	Changes for Developers.
21	Appointing the initial Manager.
22	Inaugural General Meeting.
23	Viewing the Records.
24	Removal of the common seal.
25	Abandoned goods on Common Property.
26	Maintenance Plans.
27	Online meetings.

Owners Corporations & Other Acts Amendment Act 2021.

The Owners Corporations & Other Acts Amendment Act came into effect from the 1st December 2021.

The amendment act contains a wide range of updates affecting the functions and responsibilities of Owners Corporations and key stakeholders.

In this booklet we have collected 23 key updates and explained them in simple terms, with easy to understand examples.

Unsure how to apply this new knowledge?

Be sure to speak with your Owners Corporation Manager, who is well-versed in all the changes and there to support you and your community.

Don't have an Owners Corporation Manager?

Owners Corporations are increasingly complex, and ensuring the compliance of your community requires time and expertise.

Get in touch with The Knight if you're looking for an experienced and trustworthy Manager to support your community.

phone 03 9509 3144

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This eBook is for reference purposes only and is not intended to be a comprehensive review of the developments in the law and practice or to cover all aspects of the subject matter. It does not constitute legal or other advice and should not be relied upon this way. Readers should take legal or other advice before applying the information containing in this publication.

Size of the Committee.



How many committee members were previously allowed?

Previously, any property with 13 or more lots had to elect a committee.

This committee could be between 3 and 12 members.

What are the new changes?

Under the new changes, any property with **10 or more** lots must elect a committee. The committee must now be between **3 and 7 members**.

However, the Owners Corporation may resolve by ordinary resolution to have up to 12 members.

What is the ideal size?

While you may have a committee of 12 under the legislation with a resolution, The Knight recommends keeping it at 7 maximum.

A ground-breaking study from the 70s suggests that the ideal size of team is 5 people.

More recent research has shown that after the 7th person added, each extra member reduces effectiveness by 10%.

In Owners Corporations, large committees can lead to factionalism. It can also increase the difficulty of passing resolutions as a majority of members must vote in favour.

Consider what works best for your community. If you have overwhelming interest from owners in joining the committee you may want to investigate forming subcommittees based on their skills and interest.

How can The Knight help?

The Knight has developed guidelines to assist our owners in best practice.

We also have terms of reference documents for subcommittees including: Sustainability, Financial, Communication & Social and Maintenance & Defects.

We have experience managing a diverse range of properties and will work with you to figure out what is best for your needs.

6. Proxies.

If you wish for someone else to vote on your behalf, you may appoint a proxy to represent you. Anyone can be appointed a proxy. For example, you could appoint a family member, another owner or even the manager of your owners corporation.

Proxies can be a controversial subject. You may have heard of incidents where voting has been manipulated through individuals gaining numerous proxies. The new changes to the Owners Corporation Act put in some measures to try and prevent this behaviour.

What were the previous rules?

Previously, there was no restriction on the number of proxies any individual could obtain.

What are the changes?

The new changes put a restriction on the total number of proxies an individual can hold.

If there are 20 or less occupiable lots, an individual may only have 1 proxy. Occupiable lots include apartments, townhouses, shops and offices. It does not include car parks or storage units.

If there are more than 20 occupiable lots, you cannot have proxies that amount to more than 5% of the total lot owners.

For example, if you own in an apartment building with 100 lots, you may only have a maximum of 5 proxies.

Family members do not count, however, and can be in addition to the above limits.

7. Committee Proxies.

What were the previous rules?

Committee members could appoint proxies to represent them on the committee and vote on their behalf.

It is standard practice that if a committee member cannot make a meeting, they appoint another committee member to represent them.

However, previously there was no actual requirement for another committee member to be appointed as proxy.

Under the previous legislation, anyone could be appointed which means you could have any random person who has never been to a committee meeting attend and vote.

What are the new changes?

The changes to the Act make it clear: A committee member must appoint another committee member to represent them on the committee.

What hasn't changed?

Proxies must still act honestly and in good faith and exercise due care and diligence when representing a lot owner.

8. Owners Corporation Rules.

Who is responsible when rules are broken?

Under the changes, occupiers and guests are both liable for any rules broken unless the guest is provided with a copy of the Rules.

We are not yet sure how this is going to work in practice. If you are going to have a guest over after the 1st of December, it may be worthwhile providing them with a copy of your owners corporation rules just in case.

Penalty for breach of rules.

If there is a breach of owners corporation rules and it is taken to VCAT, the court will be now be able to order a penalty of up to \$1,100 to be paid by the offender. We will have to wait and see how this is applied in practice.

Complaints about fees.

Sometimes committees need to deal with complaints that may be unwarranted or unreasonable.

The changes to the act will not allow an individual to make a complaint relating to fees owed for their lot. For example, an owner will not be able to put in a complaint if they don't want to pay a special levy.

This should help save committees time as the dispute resolution process can be difficult and time consuming.

9. Renovation & External Appearance.

What was already in place?

Under the Model Rules, an owner must get the permission of the owners corporation before making any changes to the external appearance of the lot.

Owners must also notify the owners corporation when undertaking renovations that may affect the common property.

What are the new changes?

The changes to the Act clarify things further. They state an Owners Corporation may make rules relating to proposed works to protect quiet enjoyment, structural integrity and market value.

For example, if an owner wishes to change their floors from carpet to floorboards, the Owners Corporation may make a rule prohibiting this.

Though this is entirely internal and does not affect the common property, the rule could be made on the basis that the changed acoustic rating may negatively impact others 'peaceful enjoyment'.

New rules around sustainable items.

Owners Corporations may no longer make rules that unreasonably prohibit the installation of a sustainability item on a lot.

For example, if a lot owner wants to install solar panels, the owners corporation cannot deny this request simply because they think it looks ugly.

However, the owners corporation may be able to deny the request if they have a legitimate reason. For example, if the solar panel impedes access for window cleaning.

How can The Knight help?

If you are a client and interested in making your owners corporation more sustainable, please contact your manager.

If you are not a client, and looking for a manager to assist you on your sustainability journey, get in touch with our New Business Team.



Sustainability is important to us.

That's why we went carbon neutral!

10. Health & Safety Rules.

Rules about Smoking.

Smoking can be a big problem in strata, but previously it was not clear if owners corporations could make rules against it.

With the new changes, owners corporations will have the power make rules regulating or prohibiting the drift of tobacco smoke from a lot in a multi-level development.

This will be a big relief to anyone who has to suffer from having a heavy smoker as a neighbour.

Fire system education.

It is essential that all residents know how the fire systems work in a property for their own safety and to avoid potential costs from FRV call-outs.

We see a lot of false fire alarms that could have been avoided with some education. The new changes to the act allow owners corporations to make rules requiring advice to be given to occupiers about fire safety procedures and the operation of fire alarm systems.

For example, an owners corporation could make a rule stating that all landlords need to tell their tenants that they must not hang anything off the fire sprinklers.

How do I change my rules?

To change the rules you need a special resolution to pass.

This means at least 50% of all owners will need to vote in favour for an interim resolution or 75% for a final resolution. The rules will then need to be registered by a lawyer.

If you are a client of The Knight, you can contact your manager for help.

11. Insurance excess & premiums.

Levying excess from negligent or culpable act.

It is common practice in owners corporations for the person who makes the claim to pay the excess. However, there was previously no specific legislation governing how excess is on-charged.

The changes to the Owners Corporation Act make it clear that an owners corporation can levy the excess on a lot owner for a claim caused by a culpable act or by negligence.

For example, if a tenant deliberately sets off a fire sprinkler and causes water damage, the owners corporation can levy the excess from the claim to the lot owner.

The owners corporation can only levy the owner, not the tenant, as they have no relationship to the tenant. It would be up to the owner to try and recover this amount from their tenant.

Additionally, if there is damage to common property which is not covered by insurance, the cost to repair can be on-charged to the owner. This is also the case if the cost to repair is less than the excess.

Levying excess when a claim relates to a single lot.

The owners corporation can now also levy the excess when a claim relates solely to a specific lot. For example, if a pipe bursts within an apartment and the damage is limited to that apartment, the excess can be on-charged.

Increase in premiums.

Finally, an owners corporation can now levy an increase on an insurance premium to a lot owner if an owner, guest or tenant causes the increase.

For example, the landlord of that tenant that deliberately set off the fire sprinkler could be levied the resulting increase in the premium.

The committee and manager will need to work with their insurer to determine how claims impact the premium and whether they wish to on-charge.

12. Insurance valuations.

On every OC insurance policy, there will be a figure for building sums insured.

To ensure this figure is accurate, owners corporations obtain valuations conducted by professional valuers.

These valuations represent the cost of a full replacement of the property in case of a total loss. It is not the market value.

What were the previous rules?

Previously, properties with over 100 lots or that collect more than \$200,000 in annual fees in a financial year needed to get a valuation every 5 years. Owners corporations that did not meet these requirements, were not required to get a valuation done.

What are the changes?

All owners corporations above 2 lots must now obtain a valuation every 5 years. This is a positive change as it will ensure owners corporations are not under-insured and will minimise financial risk for owners.

What is recommended?

Insurers recommend that all properties get their property valued every 3 to 5 years. The cost of building materials changes over time so it is important to ensure the valuation is regularly updated.

How can The Knight help?

If your property is managed by The Knight, the date of the last valuation will be noted at every AGM. This ensures you, and your manager, can keep on top of requirements.

We have several professional valuers your manager can contact to assist.

13. Public Liability Insurance.

All owners corporations must take out public liability insurance. For example, if a resident trips and falls on common property, they could potentially make a claim on the owners corporation's insurance.

As of December 1st, the mandatory minimum public liability insurance has increased from \$10,000,000 to \$20,000,000. This is a positive change as it will ensure owners are adequately protected.

How can The Knight help?

If your property is with The Knight, we are ensuring all new insurance renewals through our preferred broker are compliant with this legislation change.

While \$20,000,00 is the new minimum, it is possible to voluntarily raise it even further if you feel it may be required.

Your Owners Corporation Manager can put you in touch with our broker if this is something you wish to look into.

14. Manager requirements.

The next three pages are all about new requirements for owners corporation managers.

These new changes are aimed at making the industry fairer and preventing some poor practices that unfortunately do exist in the industry.

Disclosure.

Managers must now disclose any benefit received from a supplier to the Chair of the Owners Corporation.

This disclosure must be in writing before any contract is entered into.

For example, if a manager hires a plumber and receives a commission on the work, the chair must be told in writing before the plumber is engaged.

This is a positive change for the industry which we welcome.

Insurance commission.

The taking of insurance commissions is common practice in the owners corporation industry and often forms part of a manager's contract of appointment.

There has previously been no requirement for these to be disclosed to the owners corporation. The commission must now be disclosed in the manager's report at the Annual General Meeting.

This disclosure must be the percentage the commission is of your premium, not the actual amount in dollars.

If you are a client of The Knight, you will find this disclosure in the manager's report which will be attached to the AGM agenda.

15. Responsibilities of Managers.

Continuing our theme of new requirements for managers, this page explains how the changes to the act expand the responsibilities of managers.

Competitive Prices.

Managers must now take reasonable steps to ensure that any goods or services are at competitive prices and terms.

The act doesn't specifically say what 'competitive' means so common sense should be applied.

Multiple quotes should be obtained for major works. Minor works, for example, if a lock is broken at a property, may just require a work order.

We discourage seeking quotes for minor works such as this, as it wastes trades' time and can drive up prices.

Must not exert pressure.

The new changes explicitly state that a manager must not exert pressure to influence the outcome of a vote.

Unless it has been delegated to the manager, all decision making power rests with the owners corporation.

Managers can still advise their clients. For example, if there is a water leak a manager could advise their clients that they have a responsibility to get it fixed because an owners corporation must repair common property.

However, they cannot exert undue pressure to get the outcome they want.

16. Contract Terms.

There have been a few instances of owners corporation management companies putting uncompetitive terms into their contracts.

The changes to the owners corporation act include provisions to prevent this behaviour.

Termination.

Some owners corporation managers have introduced clauses into their contracts stating that their contract can only be terminated at a meeting via a special resolution.

If committees had to follow this, it would make it extremely difficult to change managers.

The changes to the act clearly state that the Owners Corporation can terminate a manager via ordinary resolution at a committee meeting.

Automatic Renewal.

Contracts may no longer be renewed at the discretion of the manager only. They also cannot automatically renew. Instead, the contract will rollover to a month by month agreement.

If your property has 51 occupiable lots or more, managers can no longer include clauses in contracts that require 3 months or more notice of termination to be given.

For properties 50 occupiable lots or under, contracts cannot include clauses requiring 1 month or more notice of termination.

Sale of contracts.

There have been instances where owners corporation management companies choose to sell their contracts to a competitor.

We are aware of instances where a new management company has taken over without the consent of the owners corporation.

With the new changes, owners corporations will be able to reasonably refuse the assignment of a contract.

However, this does not apply if the new manager is a member of Strata Community Association, the peak industry body.

17. Financial Auditing Requirements.

All owners corporations prepare financial reports. Ensuring your OC is financially healthy is essential for it to operate effectively.

Here, we discuss how the changes to the act will impact financial auditing requirements.

What did the act say?

Previously, only owners corporations with more than 100 lots or that raised more than \$200,000 in annual fees had to get audited. Smaller properties could obtain an audit by choice.

What are the changes?

If your property has more than 100 occupiable lots, it must obtain an audit after the end of each financial year.

If your property has 51 to 100 lots, the financial statements must be reviewed by an independent and qualified person. It is not specifically stated what constitutes a review under the legislation.

What if I want to get an audit but am not required to?

Properties under 100 occupiable lots are not required to get an audit, but they may do so if they choose.

It is good practice to get your financials audited by a third party. If you wish to arrange an audit, please speak to your owners corporation manager.

Who can complete the audit?

The audit cannot be completed by anyone with a personal or financial interest in the owners corporation. They must be independent. Further, they must be a registered auditor.

Changes to Ballots.

A special resolution is required for a number of things within the owners corporation act.

Ballots are the most common way for special resolutions to pass. The changes to the act will change how these are run.

What was in the act?

Ballots previously could stay open for any length of time.

It was common practice for a manager to recommend that an important ballot stay open for a long period of time to allow owners to respond.

We have even seen ballots stay open for 6 months for important issues like defects!

What are the changes?

Under the new changes, a ballot can only stay open for 14 days.

We do not support this change as it is going to make it a lot more difficult for resolutions to pass.

How can I increase the likelihood of my ballot passing?

The Knight recommends holding information nights before the ballot is sent so owners can ask questions and settle any concerns.

Your owners corporation manager may also be able to send text message reminders or call owners as an additional service.

How can The Knight help?

The Knight has recently developed a new process that can help in getting ballots passed. For an additional fee, we can arrange a one click email ballot.

Rather than having to download, fill out and then email a form, the one click ballot will take each owner to a website where they can put in their vote.

We have found that the ease of this method, increases the number of responses significantly.

If you are a client of The Knight and interested, please contact your manager and we can tell you more.

Commencing Legal Proceedings.

All properties experience some level of defects. For properties with major defects, one of the largest hurdles in getting them addressed is the requirement to get a special resolution to commence legal action against a builder.

The changes to the act will make this a bit easier.

What has changed?

Owners Corporations can now authorise legal proceedings for claims up to \$100,000 by ordinary resolution.

For example, at an owners corporation of 600 lots with \$50,000 worth of defects, the committee could resolve to take legal action against the builder rather than having to get the agreement of the majority of owners.

What hasn't changed?

A special resolution is not required for an owners corporation to recover fees at VCAT or to enforce its own rules. This has not changed.

What if the claim is over \$100,000?

If the claim is over \$100,000, you will still need a special resolution. If you need help in getting a special resolution passed, speak to your owners corporation manager.

Changes for Developers.

The next three pages will be discussing how the changes to the owners corporation act affect developers.

Like the changes affecting managers, the amendments are intended to make the industry fairer and prevent some poor practices.

Budgets.

The developer approves the first budget of the owners corporation. This can create problems as some developers try to lower the budget to make the units more attractive to purchasers.

This can result in owners corporations needing to significantly increase their budget after the first year which is a burden on the owners.

At The Knight, we work with developers to come up with realistic budgets because a budget that is too low will create more damage long term.

The changes to the act now clearly prohibit the developer from proposing an unreasonable or unsustainable budget.

Defects.

The Act will also now prohibit the developer from voting on any resolution that relates to a defect in the building.

It is common for developers to still own some lots after the property settles. This change will stop developers from voting on defects as they have a conflict of interest.

Further obligations.

The developer may no longer designate as a private lot what would normally be common property or services.

For example, a developer could not make a large storage area that should be common property, a private lot that they own.

Appointing the initial Manager.

The first owners corporation manager of a new property is appointed by the developer as they are the initial owner.

Unfortunately, this has led to some uncompetitive behaviour where developers have appointed themselves or taken payments from OC management companies in exchange for the contract.

These appointments are often on uncompetitive terms. We have even heard of properties with 20-year contracts entered into by the developer.

The amendments to the Act state that a developer cannot appoint themselves or an associate as the manager of the owners corporation. An associate is an employee, director, agent or relative of the developer.

Further, the developer must not take any payment from the manager in relation to the contract of appointment.

The Knight has never taken any payment to be appointed as manager. We see this as a positive change for the industry which will hopefully lead to better outcomes for owners.

Inaugural General Meeting.

The first meeting of a new property is referred to as the Inaugural General Meeting (IGM). They take place before the property has settled and there are specific things that need to be done at the IGM detailed in the Act.

The amendments to the Act go further. At the IGM developers will be required to disclose:

1. any relationship with the Manager of the Owners Corporation
2. any immediate or future financial transactions that will or may arise out of the relationship with the Manager.
3. any benefits the Developer will get as a result of that relationship.

How can I view these disclosures?

If your owners corporation's IGM was held after the changes came into effect you can view these disclosures by requesting a copy of the minutes of the IGM. All lot owners are entitled to view this document.

What else must the developer provide at the IGM?

At the IGM, the developer must now provide the following documents:

1. A maintenance plan.
2. Building maintenance manual.
3. Asset register.
4. Warranties (or details of warranties) and specifications.
5. Reports, certificates, permits, notices and orders, relating to the Property and Owners Corporation.

This should make life easier for owners corporations as sometimes they are not provided with these documents at handover. Owners can also request these documents should they wish to view them at any time.

Viewing the Records.

Under the Owners Corporation Act, owners and their representatives can view the records of the owners corporation. This includes documents like committee minutes, financial reports, and more.

Copies of records.

Owners Corporations had to provide the records for inspection before the changes, but previously could choose whether they wished to provide copies or not.

With the changes to the Act, owners corporations now must provide copies upon payment of a reasonable fee.

The fee must not exceed the maximum prescribed fee. This fee is updated each year on the first of July.

Cannot get copies for commercial reasons.

The act now states that a lot owner must not authorise a representative to get a copy of the register for commercial reasons without the consent of the owners corporation.

A commercial reason would be, for example, if an individual wanted a copy of every owners address in order to send them advertising material.

24. Removal of the common seal.

Every existing owners corporation has a common seal. The seal is a small stamp which is likely stored in your manager's office. We use the seal to execute documents like owners corporation certificates, contracts and funding agreements.

The changes to the act allow owners corporations to dispose of this seal. New owners corporations also no longer need to get one made.

Why would I remove the common seal?

Documents can be executed by signature alone so the seal adds an unnecessary extra step.

Uses of the seal also must be recorded at the AGM. Its removal will simplify things and reduce the bureaucracy of administering your owners corporation.

How do I remove the common seal?

An ordinary resolution is required to destroy an existing seal. This can be done by the committee or at a meeting of the owners corporation.

25. Abandoned goods on Common Property.

Goods being left on common property is one of the most common complaints we receive as owners corporation managers.

They can be unsightly, inconvenient, or even hazardous. They also leave the committee in a legal grey area as it has never been explicitly clear if the owners corporation has the power to dispose of goods left on common property.

What has changed?

An owners corporation can now move goods from common property to a safe place if the goods are blocking access and an attempt has been made to contact or locate the owner.

Further, the goods may be disposed of if the owners corporation has given written notice to the person that owns the goods of its intention to dispose of them.

What must be included in the notice to dispose?

A notice of an owners corporations intention to dispose of abandoned goods must include:

- the plan number and address of the owners corporation; and
- a description of the goods
- an address at which the goods may be collected
- a statement that on or after a specified date the goods will be disposed of by the owners corporation unless the goods are collected
- a statement that the owners corporation will retain from the proceeds of sale of the goods an amount not exceeding the cost to dispose of the goods

This notice can either be sent to the individual personally or their last known address.

It is also specifically noted in the act that the owners corporation is not liable if it disposes of goods if it follows this process.

Are there any exceptions?

The owners corporation cannot dispose of the goods if an application has been made to VCAT or a dispute exists relating to them.

26. **Maintenance Plans.**

Maintenance plans provide for the repair and replacement of capital items. They allow owners corporations to save for major repairs. They are sometimes also referred to as sinking funds. The changes to the act will change who needs to get a plan and how they are implemented.

What was in place?

Previously owners corporations with more than 100 lots or that raised more than \$200,000 in fees each year had to obtain a maintenance plan.

What are the changes?

There are different requirements for different properties.

- **If your OC has more than 100 occupiable lots.**
You must prepare and approve a maintenance plan within 12 months of changes coming into effect (by 1 December 2022)
- **If your OC has 51 and 100 occupiable lots**
You must prepare and approve a maintenance plan within 24 months of changes coming into effect (by 1 December 2023)
- **If your OC has 50 or less lots**
You do not need to prepare a maintenance plan, but you may do so.

Why would I get a maintenance plan if I don't have to?

Maintenance plans have several benefits including reducing the likelihood of having to raise special levies to cover major works, equalizing maintenance contributions between new and old owners and well-funded Owners Corporations that plan for the future are more attractive to potential purchasers.

Prepare and approve.

The wording of the amendments state that the maintenance plan must be prepared **and** approved.

Previously, maintenance plans only had to be prepared which means they could be used as a guide and not followed exactly.

Now that maintenance plans need to be approved, the contributions to the fund need to be followed as they are set out in the plan.

The changes may have significant ramifications for your budget so you may want to prepare your members for them.

27. **Online meetings.**



With the pandemic, owners corporations have had to move their meetings to online platforms such as Zoom.

Now that the restrictions are over, many owners corporations are choosing to continue with online meetings due to their convenience and accessibility.

The Owners Corporation Act states that an owner can attend a meeting by teleconferencing. The new regulations now explicitly state that a lot owner who participates in a general meeting by teleconferencing may do so by using video-conference facilities.

They also now state that a lot owner can vote on either a hard copy or electronic form. This form must include:

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

The top 3 benefits of virtual Owners Corporation meetings.

We've explored this further on our blog, follow the link below to learn more.

[Save time & money by going virtual >](#)

Other useful links.

- [Upcoming OC Act changes for Committees to be aware of >](#)
- [View the full Owners Corporations Act 2006 >](#)



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