Peter Parsons

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Q 1: Are the current constraints on owners corporations’ power to commence legal proceedings appropriate?

**Comment**: Given that the majority of disputes I am of relate to fees and the enforcement of existing rules, the current constraints to commence legal proceedings are reasonable. This prevents OCs going off on a frolic, where a (sometimes minority) section of Lot Owners become blinded by the passion they may feel for a topic.

However, allowance should be extended to cover the example cited in the discussion. If a supplier to the OC is in breach of contract (eg the supply of goods or services was not in accordance with the agreed standards), then the OC should be permitted to pursue the matter in accordance with normal dispute resolution criteria (which may involve legal costs and legal proceedings).

Q 2: Are there any other issues relating to the power to commence legal proceedings?

**Comment**: The power to commence legal proceedings for the recovery of fee, enforcement of OC rules, and the new suggestion of enforcement of contract provisions, should be agreed by a simple majority of Lot Owners, or by the Committee of Management where such a Committee exists. The resolution to commence legal actions should include a cap on the costs, where the ceiling can only be lifted be the passing of a subsequent resolution.

Q 3: Should owners corporations be able to deal with water rights, including water that falls on common property?

**Comment**: OCs should be able to deal with water rights. If a Lot Owner is currently harvesting water from common property for personal benefit, then the practice should stop, and the benefit of the rain falling on common property should be extended to all Lot Owners. This does not address the costs of the tank that an owner may have installed (at her expense), and if the tank was rendered useless, then compensation should be available for this limited number of historic cases.

Q 4: Are there any other issues relating to the power of owners corporations to acquire and dispose of personal property?

**Comment**: Where personal property is acquired, disposed of, or used (eg leased) by OC, then the transaction should be arms-length on terms no less favourable to the OC than market rates. This will ensure that:

Personal property owners do not gain an unfair advantage (eg where the owner is also the key decision maker or a major influencer around the transaction proposal).

Personal property owners can still give OC access to private property at lower costs (ie at their cost, not to the detriment of the OC).

Add a new section: s 16a **Power to acquire a lot for conversion to common property**

An owners corporation may acquire a lot from a lot owner and redefine said lot as common property.

Reason: Sometimes circumstances change and the OC may decide to acquire a private lot for the benefit of all lot owners as common property. It would be better if a lot was re-assigned as common property, rather than being acquired under s 16 (1), which can subsequently then be disposed of.

Q 5: Do owners corporations need powers to deal with goods on the common property in breach of the owners corporation rules that a person who owns the goods has refused to move or has abandoned? If so, what safeguards should there be, and should there be different safeguards for emergency situations or for goods that are a serious obstruction?

**Comment**: Common property should be regarded as a special case. If a Lot Owner abandons goods on private property (eg a car left in a car parking space), then no additional requirements are necessary. However, where common property is used, the goods should be dealt with in a reasonable time.

* If there are no complaints from lot owners, then the goods may remain on common property, as there is apparently no issue.
* If there are complaints from lot owners, then the goods should be moved within 7 days of a relevant notice being despatched to the last recorded address of the Lot Owner.
* Where the ownership is unknown, then the notice can be placed on the goods.
* Failure to remove the goods implies that the goods have been abandoned.
* The OC should be entitled to dispose of any abandoned goods. If the disposal generates revenue, then it is revenue for the OC. If the disposal results in costs, then it is costs to the OC.

Q 3: Should owners corporations be able to deal with water rights, including water that falls on common property?

**Comment**: The on-going use of a seal is important to retain.

Unlike company directors (who have liability for actions of the corporations, including entering into defective contracts), the OC or COM is largely not liable if they have operated in good faith. The use of the seal and the requirement for the current two signatures and the passing of a resolution is an important break on an individual Lot Owner from entering into contracts on behalf of the OC.

I have seen several instances in my building where an individual has entered into a poorly drafted contract. It has only been the current provisions that has allowed the contract to be cancelled (ie it was not executed correctly). I would be gravely concerned if the authorisation and execution requirements were watered down.

Affixing the common seal to contracts and documents, especially contracts ensures continuity and certainty where committees of management (COM) propchange personnel. The use of the common seal and the requirements for two witnesses mitigates against a maverick COM member from seeking to impose obligations on the OC or commitments to a supplier which may be disputable.

Q 7: What are your views about the operation of the benefit principle? What is the experience of your owners corporation in applying the benefit principle?

**Comment**: How many disputes does the current legislation actually cause? I am not sure it is so many.

If the OC is responsible for the exterior of the building, and a window to a Lot is not working, then is the cost something for the Lot Owner or the OC? I have taken the view that repairs should be the responsibility of a Lot Owner, but refurbishment (capital works) should be the OC. That said, it is not exactly clear when repairs become capital works.

On balance, the existing provisions seem reasonable. They are not going to solve every problem, but they can be applied in many instances.

Q 8: Should an owners corporations be able to recover debt collection costs from defaulting lot owners where a matter does not proceed to a VCAT or court application, or for any costs incurred before an application is made?

**Comment**: There is little financial impact on Lot Owners who are late with fees. It is unfair that the costs of collection are borne by the other Lot Owners (who pay their fees on time). The Lot Owner in arrears should be charged for the recovery costs (including letters of demand, debt collection costs and VCAT costs).

Q 9: If your owners corporation has won a debt recovery action at VCAT or a court, what was your experience in getting a costs order against the lot owner?

**Comment**: No personal experience, but I think the OC had to pay its costs. That means that one Lot Owners was able to transfer costs of recovery to all Lot Owners. This is unfair to good payers.

Q 10: Should owners corporations be able to apply a discount for the timely payment of fees or charges?

**Comment**: An incentive is always better than a sanction. The application of a discount can be calculated to yield the same income. At the same time, it gives some Lot Owners the chance to feel good about paying on time. Many utility companies offer this now, and they would not offer it if it did not lower their costs of collection and improve cash flow. This is a proposal well worth supporting.

Q 11: Should the internal dispute resolution process be completed before an owners corporation can send a final fee notice, or proceed to VCAT or a court?

**Comment**: The dispute resolution process should be at least attempted before VCAT, but not before a final fee notice.

Q 12: Are there any other issues relating to payment of fees or charges?

**Comment**: No.

Q 13: What is your experience with the fees or charges for goods or services provided by owners corporations to lot owners? For utility charges passed by the owners corporation, should recovery be linked to the actual amount charged?

**Comment**: The OC should not make a profit on any goods or services it supplies. If a profit was made, then revenue raised from other sources (eg fees) will be less for the same quantum of activity. That sends a distorting price signal to Lot Owners, and provides a subsidy to Lot Owner who use less of the profit-generating activity. This applies to more than just the provision of utilities. For all matters: cost recovery should be the guiding principle.

The only exception is where the OC may be involved in a business activity that is sold to other than Lot Owners, or where the activity was discretionary. The provision of utilities is essential. The provision of car park remote access keys is also essential if someone is going to get access to their car park.

Q 14: Is there a continuing need to differentiate between smaller and larger owners corporations? If yes, what characteristics should an owners corporation possess in order to trigger additional financial and maintenance planning obligations as a prescribed owners corporation?

**Comment**: Yes, there is an on-going need to differentiate between smaller and larger owners corporations.

a) There is cheap and accessible accounting software available assist with the preparation of financial statements in accordance with prescribed standards. If the annual levies are in excess of $10,000, then accounts should be prepared.

b) There should be no need to audit accounts where the annual levies are less than $200,000 (no change).

c) For maintenance, the current demarcation point is set too high. Whilst it is likely that larger OCs will have larger common property (eg lifts), the costs for maintenance is often the same, irrespective of the number of lots. In the absence of a maintenance plan, and the provisioning of funds for systematic maintenance, then the cost per lot owner can be much higher in a smaller OC.

Rather than defining the demarcation boundary by the value of the annual fees, or the number of lots, then it may be better to require all OCs to meet the current requirements for larger OCs where the accrual cost of maintenance is in excess of 20% of the annual fees, excluding amounts allocated for maintenance items.

d) 5-yearly valuation should apply to all OCs.

Q15: What are your views on the adequacy of planning for maintenance that is currently undertaken by owners corporations? In your experience, are owners corporations turning their minds to the future maintenance needs and setting aside adequate funds?

**Comment**: The adequacy of planning for maintenance is poor. The OC has neither the expertise nor the will to become deeply engaged in the planning and provisioning process. This is compounded if the OC seeks independent expertise to prepare a maintenance plan, as the plan is rarely read, and very rarely understood. As a result, the plan is adopted on paper only, and little meaningful actions result.

Q16: Should maintenance plans be mandatory for all owners corporations, or should there be a distinction between smaller and larger owners corporations in relation to maintenance planning and funds? If yes, where do you see the distinction being drawn?

**Comment**: The current demarcation point is set too high. Whilst it is likely that larger OCs will have larger common property (eg lifts), the costs for maintenance is often the same, irrespective of the number of lots. In the absence of a maintenance plan, and the provisioning of funds for systematic maintenance, then the cost per lot owner can be much higher in a smaller OC.

Rather than defining the demarcation boundary by the value of the annual fees, or the number of lots, then it may be better to require all OCs to establish a maintenance plan where the accrual cost of maintenance is in excess of 20% of the annual fees, excluding amounts allocated for maintenance items.

Q 17: What procedures should be in place to ensure owners corporations implement maintenance plans and the associated funding requirements?

**Comment**: The preparation of maintenance plan and the implementation of matters falling due under the plan should be part of the owners corporation certificate. This will ensure that the OC Manager highlights to the OC the need to comply with the plan.

Q 18: Should there be capacity for money to be paid out of maintenance funds for unplanned works and if yes, in what circumstances should this be allowed?

**Comment**: Yes, there should be a capacity for money to be paid out of the maintenance fund for unplanned works. The maintenance plan is only a plan and other events may occur that trigger a maintenance event. As long as the expenditure is for genuine maintenance, then unplanned works should be paid from the fund. It will then be for the OC to balance the implementation of planned works with the available funds. It may mean that works are delayed, or it may mean that a special levy is raised to cover the shortfall. The OC (or the relevant COM) should have the discretion to decide (given the current constraints of acting in good faith, etc).

Q 19: Should funds for implementing the maintenance plan come only from the maintenance fund?

**Comment**: It should be possible to transfer funds from the administration fund to the maintenance fund to cover planned works, remembering that the plan is only an estimate of the actual requirements. The OC may decide to delay administrative expenditure to make maintenance funds available.

However, the transfer from the maintenance fund to the administration should be permitted, lest the maintenance fund be stripped of the necessary accrued money.

Q 20: What are your views about contingency funds, including:

• whether contingency funds are necessary

• what type of owners corporations should have them, and

• how they should be funded, the purposes that the funds can be used for, and how such purposes should be determined?

**Comment**: Contingency planning is part of good management, and contingency planning should be encouraged. Where the annual expenditure is in excess of $10,000, a contingency of at least 10% (and preferably 20%) of the fees to be collected during the current period should be levied.

The effect of this is that if the contingency amount is not required, then the fees will be reduced for the next period, with a consequent fall in the contingency. As such, the contingency amount will become self-regulating.

Q 21: How should urgent and non-urgent repairs to the common property be dealt with where the owners corporation has failed or refused to do them?

**Comment**: A Lot Owner is a member of the body corporate and has rights and entitlements genuinely act in the best interests of the OC (which may also be in the best interest of a Lot Owner). The Act should allow a Lot Owner to act in good faith and have urgent and non-urgent repairs undertaken.

For urgent repairs, larger OCs may have after-hours contact numbers for specific trades. Each Lot Owner should be entitled to contact present an account for arms-length services to the OC for reimbursement.

For non-urgent repairs, the delay may be because of differences in priorities. The Lot Owner should still be entitled to engage repairs and obtain reimbursement from the OC. Self-initiated action may encourage the OC to act in a timely way. However, where the OC has advised the Lot Owner valid reasons for not acting immediately (eg to coordinate the work with some other works), then the Lot Owner should not be entitled to reimbursement, at the discretion of the OC.

Q 22: What are your views about how to deal with lot owners or occupiers who cause damage to common property, or who want to alter the common property?

**Comment**: Where malicious damage to common property has been caused by individuals, then the OC should be able to seek compensation (eg repairs or reinstatement of the pre-damage condition).

Where lot owners want to alter common property, then such alteration should only proceed after the passing of a Special Resolution.

Occupiers who are not Lot Owners should not be able to alter common property.

Q 23: Are there any other issues relating to repairs to common property or services?

**Comment**: Occupiers who are not Lot Owners should not be able to seek reimbursement for urgent repairs. Such actions should be initiated by Lot Owners or their agents.

Q 24: What are your views about the type and level of insurance cover that should be required?

**Comment**: Insurance should not be mandated. The purchase of insurance is a commercial decision that each OC should be entitled to make.

Lot Owners should be advised that in the long run, OCs cannot expect to gain more from the insurance than the sum of the premiums, and if all OCs were to do that, then the insurance company would be bankrupt.

Lot Owners should be advised that insurance is a comfort blanket for the fear of the unknown, and that good OC decisions can reduce the risks and fear of the future.

It is not fair that responsible, well managed OCs subsidise the poor decisions of other OCs (who need to claim on their insurance).

Q 25: Should lot owners be able to ‘opt out’ of the insurance policy taken out by the owners corporation when they take out their own insurance (and not, therefore, pay their portion of the owners corporation’s policy)?

**Comment**: Opt out should be available, but it should not be limited to Lot Owners who have their own insurance.

Q 26: What are your views about lot owners’ responsibilities where their actions (or inactions) result in increased insurance premiums or excesses payable by the owners corporation?

**Comment**: Insurance is a share of collective risk, so the actions of a single individual is shared by the insured community. Penalising an individual is not appropriate where insurance is not mandated and becomes a commercial choice of an OC.

Q 27: What are your views about the appropriate obligations for developers who control owners corporations, including the:

• obligations concerning any contracts they cause the owners corporation to enter into

• interests they must consider, and whether there are any matters they should be prohibited from voting upon, and

• duration of their obligations?

**Comment**: A developer should not be able to contract with a related company for the provision of services to the OC. A "related company" should not be limited to a subsidiary or other company, but also companies where relatives of the developer are shareholders or employees.

It is difficult for the developer to take actions in the interests of "future owners", because the developer can argue that a future owner would have also taken the same action. Rather, it would be better if the developer was required to take actions in the best interests of the OC (as opposed to the majority of Lot Owner, because the developer is in the majority!).

Recognising that developers often own the majority of lots for what may be a considerable period of time during the development, and recognising that these lots may be sold, then where a developer controls the majority of votes, contracts for management of the OC and other significant contracts (eg supply of utilities, or facilities management) should not be for more than one year.

Q 28: What other changes should be made to developers’ obligations?

**Comment**: No comment.

Q 29: What is your experience of voting and the use of proxies within an owners corporation?

**Comment**: Proxy farming is a source of significant bias in voting. One Lot Owner, with access to an owner contact database, can flood Lot Owners (particularly absentee and overseas owners) with propaganda of the type that would make a totalitarian regime proud.

Largely disengaged Lot Owners may hand their proxy to the nosiest requester, who can accumulate enough proxies to completely control the outcome of any meeting, including the AGM where only COM candidates selected and approved by the majority proxy holder are elected.

The majority may win (and rule), but democracy is not just about the majority rule. This anachronistic, early Grecian concept of democracy and majority rule fails a more contemporary view that democracy also includes political tolerance, where the rights of a minority are protected, and limitations on the abuse of power.

The OC may become polarised between one camp that hold a majority of proxies, and the rest of the owners.

It would be better not to have proxies. At the AGM or SGM, then each Lot Owner can vote on a proposal, and if insufficient Lot Owners attend a meeting, then the resolution can be interim until confirmed.

For the COM meeting, then each member should vote on matters on the agenda. Each resolution can be interim until confirmed by a majority on the COM.

Sometimes Lot Owners are in arrears due to oversight or by only a small amount. It is reasonable that a Lot Owner in arrears by less than $500 be still entitled to vote.

Q 30: Should there be restrictions placed on the appointment of proxies, and if yes, in what circumstances?

**Comment**: Proxies should not be permitted, but Lot Owners should be provided to exercise their vote, even if they are not able to attend the meeting.

Q 31: What are your views about the adequacy of the provisions that set out the Chairperson’s voting rights?

**Comment**: The Chairperson is a volunteer and may be elected to position simply because of her experience in conducting meeting. The Chairperson should still be able to vote on a motion, otherwise capable people may be dis-incentivised from taking on the role of Chairperson.

Convention is that where a motion is tied, the Chairperson votes to retain the status quo. If this convention was enforced, then providing the Chairperson with a casting vote is meaningless. However if the Chairperson is already voting in the first round of voting that results in a tie, then it is not fair that the Chairperson then has a second vote.

It is preferable for the Chairperson to vote during normal voting, but any tied vote is lost (without a casting vote from the Chairperson).

Q 32: Should a contract of sale be able to limit the voting rights of lot owners?

**Comment**: No. The contract of is mostly related to a single transaction, and a developer should not place restriction on future rights of Lot Owners.

Q 33: What has been your experience of voting within an owners corporation?

**Comment**: "One vote per lot" voting is a waste of time because is the matter is contentious, then a Lot Owner simply calls for a poll. All voting (except for voting by a COM) should be on "lot entitlement". This provides clarity and certainty to all Lot Owners.

The interim special resolution process is adequate and does not require change.

It is not clear who can issue ballots. Sometimes a COM may issue a ballot just for members of the COM, but the Act is silent on who can issue a ballot. Secondly, a ballot may be issued without the normal mover and seconder. So, a question may be voted on where there is not seconder. Thirdly, there is no opportunity to put arguments for and against a ballot. A ballot may be validly used for urgent or non-contentious matters, but the ballot process has been abused to push a certain position, stifling discussion and dissenting views. According, a ballot should require:

a) A mover and seconder; and

b) 75% majority in favour; and

c) Not more than 25% against.

Q 34: What are your views about the appropriateness of the voting thresholds for ordinary, special and unanimous resolutions, and arrangements for interim resolutions?

**Comment**: The voting thresholds are adequate except:

a) "one vote per lot" should be discarded in favour of "one vote per unit entitlement".

b) An interim unanimous resolution (75% in favour and none against), should apply to unanimous resolutions.

Q 35: What are your views about the adequacy of the provisions for convening meetings?

**Comment**: AGM and SGMs should be called by both the Chairperson and Secretary, not by either. This will ensure there is coordination and cooperation between these two office holders.

Sometimes Lot Owners are in arrears due to oversight or by only a small amount. It is reasonable that a Lot Owner in arrears by less than $500 be still entitled to vote.

Minutes should be distributed within 14 days of the relevant meeting.

Q 36: What has been your experience of annual general meetings and other owners corporation meetings that you have attended?

**Comment**: AGMs are an opportunity for Lot Owners to review the performance of the COM and to raise issues that remain unresolved. They are not dissimilar to corporation shareholder AGMs, except that the COM are all volunteers. Some AGMs are used as a forum for bashing the COM, and yet people generally and genuinely volunteer to improve the building in which they live, yet AGMs can be such bitter meetings.

Where there are complaints about delays in producing certain documents, then the simple solution is for the Lot Owners to decide to employ the services of a paid professional to produce the documents.

**Add a new clause:** s 69 (2). Reduce the maximum time between annual general meetings from 15 months to 13 months.

Reason: COMs must be answerable for their actions to an AGM, and the extended time (15 months) has been used to push through works that did not have the major Lot Owners support, and subsequently reversed, at unnecessary cost to Lot Owners. Following the AGM, the COM needs to decide whether it runs for 12 months, or 9 months to bring the AGM date back to the original starting point. The term differential (15-9=6) is too large.

Q 37: How can the views of tenants be most effectively shared with the owners corporation?

**Comment**: Tenants should be entitled and invited to attend OC meetings as observers. It is a good way to assist tenants in understanding the scope of the OC, however a tenant should not have an expectation of speaking at the meeting.

Q 38: What are your views about committees, including the threshold for and size of committees, who should be able to arrange a ballot, the chairperson’s role, and minutes?

**Comment**:

The threshold size for and size of committees is adequate.

It is not clear who can issue ballots. Sometimes a COM may issue a ballot just for members of the COM, but the Act is silent on who can issue a ballot. Secondly, a ballot may be issued without the normal mover and seconder. So, a question may be voted on where there is not seconder. Thirdly, there is no opportunity to put arguments for and against a ballot. A ballot may be validly used for urgent or non-contentious matters, but the ballot process has been abused to push a certain position, stifling discussion and dissenting views. According, a ballot should require:

a) A mover and seconder; and

b) 75% majority in favour; and

c) Not more than 25% against.

The Chairperson is a volunteer and may be elected to position simply because of her experience in conducting meeting. The Chairperson should still be able to vote on a motion, otherwise capable people may be dis-incentivised from taking on the role of Chairperson.

Convention is that where a motion is tied, the Chairperson votes to retain the status quo. If this convention was enforced, then providing the Chairperson with a casting vote is meaningless. However if the Chairperson is already voting in the first round of voting that results in a tie, then it is not fair that the Chairperson then has a second vote.

It is preferable for the Chairperson to vote during normal voting, but any tied vote is lost (without a casting vote from the Chairperson).

In today's electronic age, Minutes should be distributed to Lot Owners within 14 days of the meeting.

Q 39: In what circumstances should a lot owner be able to change the external appearance of their lot? Is there a need for agreement to be reached with other lot owners, and if yes, who should have a say?

**Comment**: A Lot Owner be entitled to change the external appearance of their lot where the change has not effect on other Lot Owners. For example, if a Lot Owner wants to install an external sunshade above a window in a private rear courtyard, not visible from other common areas, then the owner should be entitled to install the sun shade. Extending the example, if the owner wanted to install a sunshade above a window that was visible from common areas or from another lot, then a Special Resolution should be required.

Q 40: Are there any other issues about the external appearance of lots? What has been your experience?

**Comment**: The growth of high-rise developments, with small balconies has led to the increased sighting of washing lines and clothes racks. This generally reduces the visual attractiveness of a building, but must be balanced by the practical needs of the residents. Banning the use of naturally-dried clothes, in favour of using a clothes dryer is not environmentally friendly. This matter should be dealt with by OC Rules, and it may be appropriate to create a Model Rule, but it is not an easy matter to address.

Q 41: What are your views about access by lot owners and occupiers to the common property or services? Should the rights and responsibilities of lots owners or occupiers be specifically provided for in the Owners Corporations Act or model rules?

**Comment**: Rights to access to common property or services should be included in the Owners Corporation Act, not the Model Rules. It is always unfortunate where access is required via private property, and this should be avoided if possible. Where not an emergency, reasonable notice must be given to the Lot Owner, and the access time should be reasonable. For example, if garden maintenance is required, and the part of the garden is accessed through a garage, then mutually agreeable arrangements should be made with the Lot Owner, but the Lot Owner must be required to cooperate.

Q 42: Who should comply with, and be bound by, the rules? Should ignorance of the rules be a consideration?

**Comment**: OC Rules should not be able to change uses permitted by superior documents (eg planning instruments, covenants, regulations, etc). But if a building is designated as residential, even if the planning scheme allows a broader land use, the Rules should be able to place other restrictions on the use of the property. For example, a residential building should not be turned by stealth into a commercial building, by allowing individuals to set up businesses, such as hairdressing, brothels, foot spas, podiatry, dental surgeries, medical consultancy, etc.

OC Rules should apply to invitees. For the most part, this will only mean that invitees act with common decency and respect for other people (such as late night noise). For more complex situations, such as where to park a car, the invitee should be able to obtain relevant advice from the inviter. The inviter should know the rules, and should be guiding the invitee where necessary. Ignorance is not a valid excuse.

Q 43: Should a person bound by the rules (for example, an invitee) be the only person responsible for their own breaches, or should someone else (for example, the lot owner or lessee) also have responsibility? If someone else is also responsible, should that responsibility depend on whether the person ‘permitted’ the breach, and should there be any other limitations?

**Comment**: Both the invitee and the inviter should be jointly and severally responsible for compliance with the rules. Like the wearing of seatbelts in a car, both the driver and the passenger are responsible. The problem with making the invitee responsible only, is that the invitee may be a temporary attendee to the building and may leave a trail of destruction, safe in the knowledge they may never return.

Q 44: Should there be Model Rules regarding pets and smoking? If so, should there be a choice of rules such as is allowed in New South Wales (with or without a default option)?

**Comment**: There should be Model Rules regarding pets and smoking.

For pets, the Models Rules should provide OCs with a choice of the three options similar to NSW. It is reasonable for the OC to have knowledge of what pets are on the property, and to be able to withhold consent for some pets (such as snakes).

For smoking, it is insufficient to rely on the Model Rules. The Act should prohibit smoking in or within 5 metres of common property. Sidestream smoke is a known health hazard, and yet smoking is permitted in common areas, where other people may be recreating. This is not acceptable in 2016.

Q 45: Are there any other issues relating to the coverage of the Model Rules?

**Comment**: It is not always clear when the Model Rules apply and when the OC Rules apply. To clarify the situation:

a) If the OC has no Rules, then the Model Rules apply.

b) If the OC has Rules, then none of the Model Rules should apply.

This will cause the OC to consider which of the Model Rules are applicable to the OC, and stop the situation where some Rules are housed in one document, and other Rules are housed in another document. The situation is doubly confusing for tenants, who are expected to know the Rules of the OC, and may not be even aware that Model Rules exist.

Q 46: What are your views about owners corporation rules that prevent lot owners installing ‘sustainability’ items in or on their units?

**Comment**: Energy saving and sustainability measures should be encouraged, but must be undertaken in sympathetic way. The aesthetics are just as important as the energy saving or sustainability measure. The Lot Owners should realise that some buildings may just not be suitable for installations that significantly detract from the appearance. Notwithstanding, the OC should be required to consider genuine proposals, which may be developed by design professionals to limit damage to the appearance.

Some change to the appearance, may be just a change, and not actually be a negative to the appearance. Indeed, some installations may indeed improve the appearance

Q 47: What are your views about civil penalties for breaches of owners corporation rules?

**Comment**: The current civil penalties are inadequate and the NSW model (including payment to the OC) is a better guide for Victoria.

Allowing OCs to impose their own fines should not be encouraged. There are enough self-appointed police within the OC COM, and to empower them to issue fines as well would be a serious mistake.

Q 48: Are there any other issues relating to the rules of owners corporations?

**Comment**: The Rules are difficult to change because of Special Resolution is required, but Rules seem often inadequate and in need of revision. Yet, the requirement for a voting hurdle of Special Resolution prevents OCs from attempting to change Rules. To maintain Rules, they should be re-approved at least every 10 years. This will provide some incentive to update them as appropriate (and confirm unchanged Rules if they remain satisfactory).

**Part 8, s 138. Add a new subpart:**

(4) OC shall not enter into a contract that varies the rules.

**Note** Where an OC seeks to enter into an arrangement that is at variance to the rules, the rules shall be amended appropriately.

Reason: The hierarchy should be clear to OCs. The legislation takes precedence, followed by the rules, followed by the model rules, followed by any other contract. I have experience where the OC entered into a contract that varied the requirements in the rules, yet it is the rules that are provided to new apartment purchasers and tenants upon entering the building. This cohort is unaware that a previous COM had entered into a contract at variance with the rules.

Q 49: What are your views about owners corporations’ and managers’ obligations regarding availability of records and about limitation on lot owners’ inspection rights?

**Comment**: Fees for copies of records, such as the list of names and addresses of Lot Owners should not apply. In the contemporary electronic age, obtaining such a document should be simply a matter of downloading it from a secure website, or receiving it as a pdf file. The information will be readily available to allow the OC manager to undertake normal functions such as invoicing fees. There should be negligible effort involved in making that information available to Lot Owners at no cost.

Q 50: Are there any other issues relating to owners corporation records you wish to raise?

**Comment**: The increased availability of information is always preferable to restricting its availability. All information should be available by default, including documents prepared for the COM. No Lot Owner should be in a position to have any more information than any other Lot Owner. OC Managers should be able to make all documents available electronically on request.

Q 51: What are your views about the inclusion of information on short-stay accommodation in owners corporation certificates?

**Comment:** More information is preferable. Information on short-stay accommodation should be included in OC certificates to permit existing and potential owners make a more informed decision.

Q 52: Are there any other issues relating to owners corporation certificates?

**Comment**: No comment.

Q 53: What are your views about recourse to the dispute resolution process when an owners corporation is acting on its own initiative in pursuing a breach?

**Comment**: A dispute resolution process has merit and should be tried before taking the dispute externally. Recognising that if matter has become a dispute, it is less likely to be resolved through the resolution process, but some better understanding may lead to a resolution.

The dispute resolution process is not onerous, and little is lost in applying it in all situation. As long as the process is documented, then that documentation may assist an external conciliator or arbitrator in reaching a decision.

Q 54: Are there any other issues relating to dispute resolution?

**Comment**: The dispute resolution process should not be dispensed with. What is a flagrant breach for one party, may be a small transgression for another. Trying to bring about a resolution through negotiation is always preferable.

Q 55: What factors should VCAT consider in determining disputes about the validity of an owners corporation rule?

**Comment**: VCAT should consider both the rule and whether the rule unfairly discriminates against a Lot Owner or occupier. The need to also consider the resolution authorising the rule only exists is a Lot Owner or occupier is being victimised by an OC.

Q 56: Are there any other issues relating to applications to VCAT?

**Comment**: No direct experience.

Q 57: What are your views about how annual meetings under the Owners Corporations Act and under the Retirement Villages Act should be conducted in retirement villages with an owners corporation?

**Comment**: No comment.

Q 58: What are your views about the role of the retirement village operator in owners corporation meetings and in retirement village meetings?

**Comment**: No comment.

Q 59: How can the views of retirement village residents who do not own their units be taken into account in managing common property within the owners corporation?

**Comment**: No comment.

Q 60: What are your views about the process for the sale/development of apartment buildings?

**Comment**: Private property rights is a cornerstone of a society governed by the rule of law, yet instances exist where there is sequestration of private property for roads and other developments. This is a necessary part of a developing society, where often the sequestration is done for public good.

Allowing a single property owner to prevent the sale or restructure of a building may not be desirable, but it is preferable to forced disposal of private property. If some owners want to sell, they can sell. If a private property developer wants to buy, they must make an offer that is attractive to all Lot Owners.

Once a person lives in a country where contract law and private properties rights are unavailable, then one values them more and is reticent to give them up, even if the threshold is set high (eg 80%).

Q 61: What are your views about:

• who should set the initial lot liability and entitlement, and any criteria that should be followed

• how lot liability and entitlement should be changed, and

• any time limits for registering changes to the plans of subdivision with Land Victoria.

**Comment**: Lot liability and entitlement should not be set by the developer. The developer may decide to retain units in the development an assign preferential liabilities and entitlements to those units. Lot liability and entitlement should be set by an independent licensed surveyor, and determined by the criteria that are currently used for changing the lot liability and entitlement (including the value of a lot, compared to the total value of the lots).

Changes to lot liability and entitlement should be done by an independent licensed surveyor.

Changes to lot liability and entitlement should be registered with Land Victoria within 28 days.

Q 62: In the absence of a unanimous resolution, what requirements should be met before VCAT can be empowered to change the lot liability and lot entitlement on a plan of subdivision?

**Comment**: Where a Lot Owner is disadvantaged by a decision or by the failure to make a decision, then the Lot Owner should be entitled to proceed to VCAT for a determination.

Q 63: Are there any other issues relating to Part 5 of the Subdivision Act?

**Comment**: No further comment.