Functions and powers of owners’ corporations

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

My preference would be for owners’ corporations, by decision of the Management Committee, to be able to commence proceedings in VCAT and/or the Magistrates Court without having to pass a special resolution.

1. Are there any other issues relating to the power to commence legal proceedings?

No.

1. Should owners’ corporations be able to deal with water rights, including water that falls on common property?

I think owners’ corporations should be able to deal with water rights relating to water that falls on common property or runs into common property (e.g. lakes) from other property.

1. Are there any other issues relating to the power of owners’ corporations to acquire and dispose of personal property?

No.

1. 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?

I think it would be useful for owners’ corporations to be able to dispose of goods that have been abandoned on common property, subject to notification to the known or suspected owner of the goods.

1. Do the requirements for a common seal still serve a useful and legitimate purpose? If not, who should be able to sign contracts on behalf of the owners’ corporation, after the necessary resolutions and procedural steps have occurred?

I think the use of a common seal should be retained. Power to affix the common seal can be delegated (e.g. to the Manager) at the AGM.

Financial management of owners’ corporations

1. What are your views about the operation of the benefit principle? What is the experience of your owners’ corporation in applying the benefit principle?

I guess it depends what is meant by “fair and reasonable”. One of my owners’corporations had a ground floor apartment owner who needed to replace the floor of the apartment and claimed it was common property and should be paid for by the owners’ corporation. The committee applied the benefit principle and the apartment owner met the full cost.

1. Should an owners’ corporation 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?

Yes.

1. 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?

Costs have usually been awarded in VCAT, but this is not guaranteed.

1. Should owners’ corporations be able to apply a discount for the timely payment of fees or charges?

Fees should be structured on the basis of payment when due, with no discount for early payment.

1. 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?

Not in my opinion.

1. Are there any other issues relating to payment of fees or charges?

It might be useful for an owners’ corporation to be able to impose a fine on a member who refuses to comply with the owners’ corporation rules, but there would need to be some safeguard against abuse of the process.

1. 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?

I think the Owners’ Corporations Act should be consistent with the Residential Tenancies Act in this regard.

Maintenance

1. 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?

I think the obligations on owners’ corporations should be consistent, regardless of size.

1. 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?

This is too broad a subject for a general answer. Responsible managers and committees of management will prepare appropriate long-term maintenance plans and budget accordingly. Others will do as they please, and suffer the consequences. (One of my owners’ corporations has a 15 year maintenance plan and has not had to increase its fees in eleven years).

1. 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?

All owners’ corporations should have a maintenance plan and should budget accordingly.

1. What procedures should be in place to ensure owners’ corporations implement maintenance plans and the associated funding requirements?

None. Those who are lazy or incompetent will pay in the longer term.

1. 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?

Yes. Despite the best of planning and budgeting, unforeseen expenses may arise and have to be met. The Maintenance Fund should be regarded as a global sum, not a series of small pots of gold allocated to specific items.

1. Should funds for implementing the maintenance plan come only from the maintenance fund?

Not necessarily. Excess funds in the Administration Fund should be available for maintenance, at the discretion of the management committee. I do not see what benefit is provided by the section 44 requirement for a special resolution. The management committee should be able to expend maintenance funds as necessary, even when not strictly in accordance with the maintenance plan, with subsequent report to the AGM.

1. What are your views about contingency funds, including:
   * + whether contingency funds are necessary
     + what types 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?

I see nothing wrong with including a general contingency as part of the annual budget. This may be particularly useful in the first few years of an owners’ corporation’s life, when actual expenses are unknown in advance.

1. 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?

Requests for repair of common property should be directed in the first instance to the owners’ corporation manager. If they are urgent the manager should act under the powers usually delegated at the AGM. Where the matter needs to go to the management committee, a decision can be made at a meeting or between scheduled meetings by way of email/correspondence. (Maybe I just don’t see the problem).

1. 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?

I support the NSW legislative approach enabling the tribunal to order repairs and costs to be met by a lot owner and/or occupier who causes damage to common property. If this is enforced then there should not be a need to impose an extraordinary fee.

1. Are there any other issues relating to repairs to common property or services?

No.

1. What are your views about the type and level of insurance cover that should be required?

I think most of the insurers in the marketplace for owners’ corporations now offer policies that include specific sums for repair & replacement, public liability, voluntary workers, fidelity guarantee, office bearers’ legal liability, machinery breakdown, audit costs and legal defence expenses. I am not sure that the OC Act needs to specify the appropriate level of cover.

1. 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)?

Absolutely not.

1. What are your views about lot owners’ responsibilities for any excesses or increased premium payable by the owners’ corporation?

No opinion.

**Additional item – insurance**

While section 61 of the OC Act is appropriate in respect of multi-level developments, it applies to “all lots in the plan” and thus, where a single plan comprises both multi-level developments and (for example) separately titled houses within the same owners corporation, the owners corporation is required to take out reinstatement and replacement insurance for those houses (even though they are not part of the multi-level development). In one owners’ corporation with which I am associated, this has led to residential insurance costs of around $200,000 p.a. (with individual house owners still required to make their own arrangements with respect to contents insurance) and owners of lower value houses effectively subsidising owners of higher value houses (because all house owners have the same lot liability).

I believe it would be preferable for the reinstatement and replacement insurance to be confined to multi-level developments only, thus S61 could read - “(1) If a building on a plan of subdivision is located above or below common property, a reserve or a lot, the owners corporation must take out the following insurance in respect of all *such* lots in the plan – (a) …”

Meetings and decisions of owners’ corporations

1. 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?

I support the provisions of the NSW legislation, as described in section 5.1 of the issues paper.

1. What other changes should be made to developers’ obligations?

I like the suggestion that the developer provide a copy of the certificate of occupancy at the first meeting of the owners’ corporation.

1. What is your experience of voting and the use of proxies within an owners corporation?

I have not had experience of the mis-use of proxy votes.

1. Should there be restrictions placed on the appointment of proxies, and if yes, in what circumstances?

I don’t think so.

1. What are your views about the adequacy of the provisions that set out the Chairperson’s voting rights?

I think the provisions are adequate.

1. Should a contract of sale be able to limit the voting rights of lot owners?

No.

1. What has been your experience of voting within an owners’ corporation?

There is widespread lack of involvement and it is unusual to have a quorum at AGMs.

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

Better minds than mine have failed to come up with a better method than we have at present.

1. What are your views about the adequacy of the provisions for convening meetings?

The provisions are adequate.

1. What has been your experience of annual general meetings and other owners’ corporation meetings that you have attended?

A good agenda and a good chairperson will produce a good meeting (management committee or AGM).

1. How can the views of tenants be most effectively shared with the owners’ corporation?

Via the manager.

**Additional item – meetings**

Section 69, sub-section (2) of the OC Act provides that the time between annual general meetings must not exceed 15 months.

I believe it would be preferable for AGMs to be held within a fixed period, say six months, after the end of the relevant financial year.

Committees

1. 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?

I have acted as secretary for committees ranging in size from one to 17 members. I have never experienced what I would call an effective committee to have more than seven members. In relation to owners’ corporations committees specifically, I have served on three such committees for a total of some 30 years. While small is beautiful, I think committees with fewer than four members could be dangerous.

A good manager will arrange for committee agenda and supporting papers to be circulated prior to committee meetings.

Rights and duties of lot owners and occupiers

1. 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?

I think this should be covered by the owners’ corporation’s rules. Obviously, the rules for a multi-storey development should differ from those for individual houses that happen to be covered by an owners’ corporation.

1. Are there any other issues about the external appearance of lots? What has been your experience?

One of the owners’ corporations with which I am associated has a building and environment management code that specifies paint colours that are permitted for houses within the OC and also specifies plants that may be used in front gardens. Despite the apparent restrictive nature of the code, it seems to work well.

1. 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?

I think there is too much variation in owners’ corporations for this matter to be addressed in the Act or the model rules. It is best left to individual owners’ corporations to make their own rules.

Rules of the owners’ corporation

1. Who should comply with, and be bound by, the rules? Should ignorance of the rules be a consideration?

All owners, occupiers and visitors to any property covered by the owners’ corporation rules should be bound by the rules. Owners should have responsibility for advising occupiers of the rules. Occupiers should have responsibility for advising visitors of the rules.

1. 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?

When seeking compensation for a breach of the rules, the owners’ corporation should pursue the owner of the lot concerned. The owner may then pursue the occupier of the lot (if the occupier differs from the owner). The occupier may then pursue the visitor, where appropriate.

1. 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)?

My preference would be to see these matters covered by the individual owners’ corporation rules and not by the model rules.

1. Are there any other issues relating to the coverage of the Model Rules?

I think the model rules should be confined to the bare minimum.

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

I do not support such rules.

1. What are your views about civil penalties for breaches of owners’ corporation rules?

I think the penalties should be expressed in the Act in terms of penalty units (so the Act is always up to date). As indicated under paragraph 12 above, it might be useful for an owners’ corporation to be able to impose a fine on a member who refuses to comply with the owners’ corporation rules, but there would need to be some safeguard against abuse of the process.

1. Are there any other issues relating to the rules of owners’ corporations?

I would like to see some resolution to the problem of short-term sub-letting of apartments for commercial purposes. I think individual owners’ corporations should be able to restrict or prohibit such practices via the owners’ corporation rules.

Owners’ corporation records

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

I think individual owners should have unfettered access to records but they should pay reasonable fees if they require a hard copy of such records.

1. Are there any other issues relating to owners corporation records you wish to raise?

No.

1. What are your views about the inclusion of information on short-stay accommodation in owners’ corporation certificates?

As indicated under paragraph 48 above, I think this matter should be able to be dealt with in the owners’ corporation rules. A copy of the rules could be made available with the relevant owners’ corporation certificate.

1. Are there any other issues relating to owners corporation certificates?

Nothing comes to mind.

Dispute resolution

1. 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?

I would prefer to see mediation before legal remedies are pursued. On some occasions, however, this simply is not possible.

1. Are there any other issues relating to dispute resolution?

Nothing comes to mind.

Applications to VCAT

1. What factors should VCAT consider in determining disputes about the validity of an owners’ corporation rule?

The rights of the individual and the rights of the corporation.

1. Are there any other issues relating to applications to VCAT?

I would like to see decisions of VCAT enforceable with immediate effect.

Owners’ corporations in retirement villages

1. 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?

No comment.

1. What are your views about the role of the retirement village operator in owners’ corporation meetings and in retirement village meetings?

No comment.

1. 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?

No comment.

Part 5 of the Subdivision Act

1. What are your views about the process for the sale/development of apartment buildings?

I do not think individual owners should be bound by a decision of other owners and thus should not be compelled to sell.

1. 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.

Any suggestion for change may be worse than the present situation.

1. 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?

The special resolution requirement of 75% should suffice.

1. Are there any other issues relating to Part 5 of the Subdivision Act?

No.

**A further observation**

In Table 1 on page 6, reference is made to owners’ corporations with 0-3 lots. Since it is unlikely that there will ever be a need for an owners’ corporation where there are zero lots or one lot, I think the reference in Table 1 should be amended to 2-3 lots.