**Review of Vic strata laws**

**Issues Paper 3, Apr 2016**

**Sale of Land and Business**

**Submission 13 May 2016**

**About Strata Community Australia (Vic) Inc.**

SCA (Vic) is the pre-eminent professional association of the owners corporation industry, and was formed in 1990 to provide a forum for improved standards and education in the industry. Supporting more than 80% of all owners corporation managers it is the only organisation solely focused upon representing this increasingly significant industry, and reaches and represents 530 owners corporation professionals who manage approximately 375,000 lots. It also represents industry suppliers and owners corporations, making it the voice of all with an interest in the management of owners corporations. Members benefit from representation, promotion, establishment of professional practice guidelines and ethical standards, and professional development through education seminars, conferences and regularly publishing bulletins on items of professional interest. SCA (Vic) is a Corporate Member of SCA, which represents practitioners throughout Australia. The national and all state and territory strata industry bodies around Australia have the same brand and names, and continue toward increasing national alignment, co-ordination, collaboration and integration. More information about the Associations is available at [www.vic.stratacommunity.org.au](http://www.vic.stratacommunity.org.au) and [www.stratacommunity.org.au](http://www.stratacommunity.org.au)

**About the owners corporation or strata title industry in Victoria**

Changing lifestyle choices of Victorians and demographic shifts have led to rapid growth in higher density dwellings and the owners corporation industry. With 88,475 owners corporations and 747,336 lots in Victoria and about 1,500,000 Victorians or 1 in 4 people living in or affected by owners corporations, it represents the management of property worth $300 billion. More than $1 billion per year is collected and spent. They comprise residential properties ranging from 2 units in a suburban street to many hundreds of units in inner city apartment buildings. Owners corporations also encompass commercial, retail, lifestyle resorts, retirement villages, car parks, storage facilities, industrial and, increasingly, mixed developments comprising more than one form of development.

The prevalence and importance of the strata sector is increasing. In 2014, the Vic Government’s Plan Melbourne strategy says we need an extra 1.6 million dwellings by 2051 and 66% of these would be apartments or townhouses. That is, 66% is to be strata and only 34% would be detached houses.

50% of all plans registered by Land Victoria in 2013-14 were strata ie owners corporations.

Owners corporation managers facilitate the management of:

- People in a community living environment

- Billions of dollars of other people’s money on an on-going and not a single transaction basis

- Entire communities and their current and future assets and facilities

**About the owners corporation or strata title industry in Australia**

The industry continues to grow rapidly in Australia with around 270,000 owners corporations comprising 2,000,000 lots Australia wide. It represents the management of property worth $1.2 trillion\*. There are approximately 3,300 owners corporation managers in Australia; with 3.5 million people living or working in owners corporation schemes. Conservatively, it is estimated 20,000 Australians work in and derive their income from the strata title industry. Urban planning policies around Australia are targeting annual growth of more than 10% for the next 15-25 years, so the prevalence and importance of this sector is increasing.

\*In comparison, the total value of Australian superannuation is $2t, and Australian listed stocks is $1.7t.

**Background**

Minister for Consumer Affairs, Jane Garrett, announced at the CHU SCA (Vic) Symposium on 21 Aug 2015, a full review of the operation of the Owners Corporations Act 2006.

This is a post implementation review, about 8 years after it was completely changed, and will be a full public review.

Our full Policy Position document covers the SCA (Vic) position on all owners corporation matters. These policy positions proactively inform and assist this review with possible areas of improvement and research to support the suggestions.

There will be 3 separate pieces to the review. Each piece will involve a process that includes, firstly, an Issues Paper, then secondly, an Options Paper. These 3 pieces are:

1. Issues Paper 1, Dec 2015: Conduct & institutional arrangements for estate agents, conveyancers & OC managers;
   * Note: this re-presents issues from a previous review whose outcomes were contained in the draft 2014 Bill regarding the review of the regulation of strata managers.
2. Issues Paper 2, Mar 2016: Owners Corporations [general]
3. Issues Paper 3, Apr 2016: Sale of land and business

The issues paper is available on the CAV web site [consumer.vic.gov.au/consumerpropertylawreview](http://submit.consumer.vic.gov.au/ch/25390/2d56f3h/2158729/930ce14961.html)

This submission should be read in conjunction with the issues paper.

Part A: Sale of land process

1. Before signing a contract of sale
2. **How could the current requirements for the disclosure of financial information before a contract of sale is signed be improved to take better account of property being sold ‘off-the-plan’?**

SCA (Vic) strongly believes that the current process of disclosure of financial information could be improved by requiring the mandatory provision of Owners Corporation Certificates for property’s sold ‘off-the-plan’. Also that any budgets set and disclosed at this early stage of the process must be set realistically.

We strongly agree with new NSW strata laws that a developer is liable if they don’t set realistic budgets. It provides for compensation from developers who lure unwary buyers with unsustainably low levies. Developers promise fantastically low levies which are a fantasy and deliberately mislead purchasers over the real level of fees. Inevitably this leads to an unavoidable increase in fees in the subsequent years, and potentially results in financial hardship for many owners.

We strongly agree with Qld strata laws such that developers owe duties to both current and future members.

The SCA (Vic) Policy Position on requiring disclosure in off-the-plan sales is reproduced below.

Aside from the specific issue of off-the-plan sales, in the general sale of land process for existing properties, there remain issues of post-contractual disputes being caused by the regulation of the pre-contractual information stage. Hence, the SCA (Vic) Policy Positions on OC Certificates are reproduced below:

* Requirement to include OC Certificates within the Contract of Sale,
* Ability for OCs to be disclosed as inactive

## Off-the-plan sales – remove the gap by requiring disclosure from initial owners [developers]

A vendor’s obligations on the sale of land in Victoria are set out in the Sale of Land Act 1962. An owners corporation certificate is required to be attached to the Section 32 statement of the contract of sale.

When the land is sold “off the plan”, generally, that land will not yet be affected by an owners corporation. Therefore, the obligation to include an owners corporation certificate in the Section 32 statement does not arise. The obligations under section 32 are not ongoing after the date of sale. Once the plan is registered, there are no additional obligations for the vendor to disclose matters regarding the owners corporation and the vendor is not required to obtain an owners corporation certificate for “off the plan” transactions.

The Legal Practitioners Liability Committee has also identified this anomaly in the legislation. It stated:

“The Act does not directly address certification requirements for off the plan developments. Owners corporations are defined under the Act to mean body corporates incorporated by registration of a plan of subdivision. Given that off the plan developments do not have a registered plan of subdivision at the time s32 statement obligations arise, they appear to escape the certification requirements imposed in sub-s32(3) of the Sale of Land Act 1962 (Vic).”

It should not be left so that only informed purchasers conduct due diligence in relation to land [eg ordering rates, land tax, VicRoads, heritage and other certificates] and order owners corporations certificates prior to settlement.

**SCA (Vic) recommends that if an owners corporation will be created in an “off the plan” sale, then to the full extent known, the contract of sale should require that purchasers receive the same information as that required for an owners corporation certificate in an existing owners corporation.**

***Background:* Developers presales budgets found wanting**

Many developers go to market with presales documentation budgets that are poor and inadequate for the first year of an owners corporation. Developers have an incentive to set low fee levels as it aids in the marketing of a building [potential buyers will negatively view high fees].

Some use rules of thumb to gauge what the minimum level of an adequate first budget of an OC should be. For example, 0.9% of the value of the building in large OCs with extensive facilities such as pools, gyms and lifts. Or 0.5% of the value of the building in normal OCs. Regardless, it is common that developers, in order to secure sales, try to keep the fees at levels far under what is reasonably required.

The owners rightly cry foul when the second year budget is prepared by the manager and is double the developer’s first year budget.

**It is essential that developers of new properties provide a defensible and best-estimate of the first full and typical year’s owners corporation expenditure. Further, the first full year estimate should *not* include the savings afforded to new properties where warranties on significant items such as lifts, essential services and air conditioning may result in, for example, lower repair costs to maintain than will be experienced in subsequent years.**

The initial owner-developer should fully disclose the forecast maintenance and management costs of the property.

## Requirement to include OC certificates within the Contract of Sale

**SCA (Vic) is concerned with the potential for error and/or insufficient disclosure which can cause unnecessary hardship for the thousands of Victorians buying into owners corporations. SCA (Vic) recommends mandatory inclusion of Owners Corporations Certificates (in accordance with Section 151 of the Owners Corporations Act 2006) in all Contracts of Sale (section 32 of the Sale of Land Act 1962) for the sale of lots within an Owners Corporation.**

* There were 57,870 sales of strata lots that are part of an owners corporation in 2013, according to the 2014 Victorian Government’s Regulatory Impact Statement.
* Owners corporations play an important role in sustaining residential property values in Victoria.

Yet still, to date, the vast majority of consumers are unaware of the implications of living within an owners corporation. And for those who buy in, it’s not long before they are left out of pocket and mentally anguished.

The certificate is an important and legal document that must be accurate, is accountable and there may be consequences for non-compliance. Its purpose is to enhance the transparency of owners corporations. To disclose matters such as rules, fees, levies, liabilities and activities affecting an owners corporation. Fees can be considerable outgoings and therefore affect a purchaser’s ability to live within their financial means.

The results are far reaching; not only adversely impacting the individual and their family, but also all other lot owners when insufficient funds are at hand to protect their collectively shared investment. The issues are also known to create ill feelings between neighbours, and is seen impinging on the socio-economic mindset of Victorians.

Legislative changes introduced 1st October 2014 to section 32 of the Sale of Land Act 1962 provides that vendors may themselves disclose information pertaining to their owners corporation. However if you look closely at the issues that must be disclosed, you will see the unrealistic expectation that an owner may actually be aware or able to access a majority of the information. The details required are not all available on-line or accessible by searches.

The option to self disclose can invariably lead to insufficient, or incorrect information being passed on, and, a misconceived or ill informed decision being made by the purchaser.

Below are examples of just a few mandatory obligations that an owners corporation certificate must contain, and a vendor too if they choose to self disclose the required information:

* Fees and charges that are imposed and proposed to be imposed on the lot
* If correct figures are not disclosed adjustments cannot be accurately made at the time of settlement. The underlying issue is that fees and charges accrue against *the lot*, so if the vendor does not disclose unpaid fees the responsibility to pay falls to the purchaser.
* An individual lot owner can include ‘known’ details, as per invoices or minutes. However it is not reasonable to expect an owner be aware of issues about to give rise to expenses. Particularly in instances where a professional manager is engaged, or a committee is actively pursuing issues. In such cases details may not be publicised to all lot owners until investigations are finalised, or even quotes received.
* The funds held by the owners corporations
* The account of the owners corporation is and should not be accessible by the lot owners as individuals, therefore the current status of the account is not known at any given time. Generally annual or possibly quarterly statements may be received, with financials having been prepared by an external source at the expense of the owners corporation.
* Liabilities and contingent liabilities
* Once again individual lot owners are generally only informed of such issues at the time decisions are to be made and all information is at hand. Individual lot owners would not be across issues which although are currently pending, have not seen action taken. Yet these contingent liabilities are required to be disclosed.

Inevitably the ability to identify details of such circumstances will lead to misinformation or lack of information being disclosed by an individual lot owner. Self disclosure is an unreliable source.

The subtle difference is that a lot owner has an expectation to cover their own living expenses, but generally limit this expectation to expenses for property and services internal to their lot. They fail, or are disassociated with, the condition and needs of the common property, which is the often overlooked, shared responsibility of all lot owners.

Ensuring a section 151 Owners Corporation Certificate is included within each Contract of Sale will ensure that the person providing the information is the person best suited to be across, and have access to, all the information required; either the professional OC Manager or the Chairperson, in the case where a professional manager has not been appointed.

***Background:* Disclosure certificate as part of contract of sale around Australia**

Information (usually in the form of prescribed certificates) must be provided by schemes in all jurisdictions except Tasmania. Comparing strata laws in one area, being disclosure, shows that:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Searches & Disclosures** | **SA** | **VIC** | **NT** | **WA** | **QLD** | **NSW** | **TAS** | **ACT** |
| Does information (searches, disclosure statements, etc) need to be provided for sales by schemes? | Yes.  S139  CTA | Yes.  S151(4)(b) OCAct  Prescribed  information & owners  corporation  certificate in  vendor’s  statement | Yes.  UTR Sch6 | Yes.  S69 STA | Yes.  S206 BCCMA | Yes.  S109 SSMA | No. | Yes.  S72 UTA |
| Can schemes charge a fee for providing information? | Yes  S139 CTA | Yes  S151 OCAct | Yes  S37 UTA | Not stated | Not stated | Yes  S109 SSMA | Not applicable | Yes  S75 UTA |

## Ability for owners corporations to be disclosed as inactive

**SCA (Vic) is concerned that new provisions within the Sale of Land Act 1962, create an easy opt out for owners who fail to comply with their mandatory obligations of their Owners Corporation, under the Owners Corporations Act 2006. The ability to simply disclose to a new owner that the OC is ‘inactive’ leaves potential purchasers uninformed of their pending obligations, and misses the opportunity to reduce the exposure of the owners corporation; which impacts new and pre-existing owners.**

* There were 57,870 sales of strata lots that are part of an owners corporation in 2013, according to the 2014 Victorian Government’s Regulatory Impact Statement.
* Owners corporations play an important role in sustaining residential property values in Vic

Yet still, the newly introduced provisions of the Sale of Land Act 1962, appears to say ‘it’s okay’ for an owners corporation to fail to comply with the statutory duties imposed on them as an individual and as a member of the collective body known as the owners corporation.

The Owners Corporations Act 2006 was introduced to protect the collective and common property of all individual owners and their interests as a member of an OC. It provides the functions, powers and duties the OC needs to maintain and ensure protection of the OC, by implementing and managing its accounts, carrying out maintenance, managing its assets, and its administrative duties. Which include obligations to take out insurance as well as to create, comply and police rules for the health, safety and enjoyment of those using the common property and their lots.

The new legislation states an individual owner can simply disclose to a potential purchaser in the section 32 statement (of the Sale of Land Act 1962) that their OC is ‘inactive’. When you refer to the definition of ‘inactive’, it clearly indicates that the OC is given permission to flout their obligations to administer the common property, maintain its funds and/or have insurance to protect the property and liability of the owners corporation.

Section 32F Information relating to any owners corporation to be disclosed in section 32 statement

32F (2) In this section a reference to an owners corporation that is inactive includes an owners corporation that has not, in the previous 15 months—

(a) had an annual general meeting; and

(b) fixed any fees; and

(c) held any insurance.

The purpose of the Owners Corporation Certificate is to enhance the transparency of owners corporations. To disclose matters such as rules, fees, levies, liabilities and activities affecting an owners corporation. Fees can be considerable outgoings and therefore affect a purchaser’s ability to live within their financial means. Failure to have an ‘active’ OC exposes a purchaser to risks that they may unfortunately be unaware of under ‘active’ circumstances. It allows a sale to proceed with an owner who has limited, if at all any, idea of what it means to live in an owners corporation and their impending obligations.

As mentioned previously when we discussed the provision for owners to self disclose all activities of their OC, the impact of disclosing inaccurate or insufficient information is far reaching. It adversely impacts the individual and their family, but also all other lot owners.

SCA (Vic) continues to recommend the removal of the legislated ability for self-disclosure at the time of a sale and the ability for an OC to be ‘inactive’.

1. **Would there be advantages to having sellers obtain and provide potential buyers with building and pest inspection reports prior to selling their property? Please give reasons for your view.**

Yes, as it applies to Owners Corporations and common property.

Defects are a significant and systemic issue for owners corporations.

We agree with the ACT laws cited requiring mandatory building inspections.

A question was raised whether building inspections are still relevant in situations such as new buildings under warranty. Defects are even more relevant to new owners corporations, compared with older owners corporations. Combined with the fact owners corporations have extremely limited recourse to warranty insurance [not required for more than 3 storeys].

In response to just one of many systemic defects issues, regarding flammable cladding, recently the Building Ministers Forum outlined steps, such as the possibility of mandatory accredited third party certification of cladding and other sensitive building materials. This is necessary but likely not sufficient.

The Victorian government should change the laws about defects.

It should improve warranty insurance. It is inequitable that warranty insurance is exempted for high rise apartments [more than 3 storeys]. There is no reason there should be a difference between a stand alone home versus apartments. [Supported by the owners group, OCNV (Owners Corporations Network Victoria).]

It should consider NSW laws. NSW has changed its strata laws such that developers have to pay a 2% defects bond for surety. Also, the developer has to fund a defects report in the first 2 years, done by a qualified independent [adequately defined] inspector.

We strongly agree with NSW strata laws such that developers are explicitly prohibited from voting on building defects matters.

We strongly agree with Qld strata laws such that developers owe duties to both current and future members.

The government should improve building and design standards, because many issues in strata can be traced back to this source eg defects, odour, noise, car parking. The SCA (Vic) Policy Position on improving building and design standards is reproduced below.

Also note in regard to other reports for common areas, that a professionally managed OC will have undertaken the necessary reports to manage risks to the common property. These reports may include where relevant, an Annual Essential Safety Measure Report (for fire services), Occupational Health and Safety Report (for potential risks of injury), Valuations (for insurance purposes), Asbestos Audit (for relevant buildings), Termite or other Pest Inspections (where pest problems have been identified). Currently purchasers do have access to these reports where they exist, as they can obtain a copy of their relevant report for their building as part of their due diligence in purchasing the unit, as a request through the vendor a search of records.

## Improved building and design standards

**SCA (Vic) supports any improvements to building and design standards.**

**Third Party Support:**

Supported by the owners group, OCNV (Owners Corporations Network Victoria).

**Why?**

Many issues in owners corporations can be traced back to this source. For example, defects, odour, noise.

SCA (Vic) believes that builders and developers should deliver a product made with quality workmanship and free from defects. SCA (Vic) supports legislation and regulations concerning defects that adequately balance the rights and responsibilities of owners corporations, their committees and owners, and of builders and developers.

More rigorous processes for mandated final inspections and issuance of completion certificates, including certificate of occupancies, should be enforced.

In particular SCA (Vic) would support the introduction of mandatory ‘waterproofing’ inspections; providing a clearer direction of responsibilities and warranties. Failed or inadequately applied membrane is one of, if not the most, commonly identified defect giving rise to disputes with builders and developers.

***Background:* Research project - Managing Major Repairs Report**

Research was undertaken by UNSWat the City Futures Research Centre on managing major repairs and maintenance in the residential strata sector in New South Wales. The aim of this study was to undertake research into the attitudes towards, and practice of, funding major repairs in the strata sector. The findings will provide strata owners, owners’ corporations, strata managers and policy makers with new and systematic information on the nature and scale of issues surrounding the provision for major repairs in strata in NSW. It is expected that this research will directly inform best practice, policy innovation and educational programmes for practitioners and policy makers in the sector.

The most common problems identified were building defects. Of the respondents who owned a property that was built since 1997, almost two-thirds owned a lot in a scheme with ongoing defects in the building. The defects most commonly identified by survey respondents related to water ingress.

Part B: Buying property ‘off-the-plan’

8. Mandatory disclosure to buyers of off-the-plan property

1. **Do buyers have the correct amount of information to make informed decisions about whether changes to the plan have a material effect? Please give reasons or examples to illustrate your position.**

SCA (Vic) does not believe buyers have the correct amount of information to make informed decisions about whether changes to the plan have a material effect; particularly noting that the information within an OC Certificate is not required to be disclosed initially. So there may be none or continuing insufficient advice to build on. OC Certificates should be mandatory for ‘off the plan’ sales, and the certificates updated as may be necessary, as the disclosed information is impacted by amendments to the plan.

Separate to the issue above there are some additional disclosures and safeguards worthy of consideration.

The SCA (Vic) Policy Position on delineating common property is reproduced below. For example, this recommends that the developer’s ability to enter into leases, licences or agreements etc. for which the developer is a beneficiary be limited to 3 years.

Also reproduced below is the SCA (Vic) Policy Positions on the Prescribed form - Statement of Advice and information for prospective purchasers and lot owners.

# Delineating common property

Owners corporations can be severely and unfairly disadvantaged financially, where an area required/designed for the use and/or enjoyment of the owners corporation is created as a private lot on the plan of subdivision and then leased back to the owners corporation for such purpose. In such witnessed instances, such a lot is inappropriately retained by the developer. It is more appropriate just and fair, the area be identified as common property.

An example of such an instance is the designation of riser cupboards as a private lot and ownership being retained by the developer. The owners corporation was therefore obligated to enter into and fund the leasefrom the developer to use the cupboards for their built purpose; to accommodate services to all lots such as telephone and foxtel cables. S4 of the Act clearly identifies the responsibility for the repair and maintenance of such services as that of the owners corporation, and it is therefore more appropriate the ownership of the riser cupboards be that of the owners corporation and be created on the plan of subdivision as common property.

A further example is a private lot on a new plan of subdivision which will be owned by a developer and then leased back to the owners corporation so they could receive the benefit of the pool and gym facilities for which it was designed. The lease entered into transferred the responsibility for all outgoings on to the owners corporation.

Whilst this second example is a reasonable business proposition for the owners corporation to enter into, it may not be on favourable terms for the owners corporation.

Another example is the developer entering into a peppercorn 99 year lease of common property for the purpose of advertising signage, mobile phone towers and car parks, for which he receives a large ongoing financial benefit for.

This is despite s68 of the Act imposing obligations on the initial owner to act honestly and in good faith and with due care and diligence in the interests of the owners corporation in exercising any rights under the Act.

**SCA (Vic) recommends the Subdivision Act 1988 be changed so that, where an area is required and/or designed for the use and/or enjoyment of the OC, it is classified on a plan of subdivision as common property.**

**SCA (Vic) recommends that the developer's ability to enter into leases, licences or agreements etc. for which the developer is a beneficiary be limited to three years.**

# Prescribed form - Statement of Advice and information for prospective purchasers and lot owners

The statement of advice and information for prospective purchasers and lot owners is contained in Regulation 12, Schedule 3 of the Owners Corporations Regulations 2007.

The wording omits two key statements and fails to address multiple OC’s and the implication to lot owners. It needs to say that OC’s that do not have a professional manager and are self-managed (ie, run by a ‘volunteer manager’) are still subject to, and need to comply with obligations under the Act and Regulations.

And it omits that the role of a professional manager typically includes assisting owners with the administration, management, finances, meetings, maintenance and insurance of common property.

**SCA (Vic) recommends that the existing form needs further information about obligations of an owners corporation to comply with the Act and outline the administrative duties of a professional manager.**

***Management of an owners corporation***

An OC may be self-managed by the lot owners or professionally managed by an OC manager.

If an OC is self-managed, the lot owners must undertake the duties and obligations contained within the Owners Corporations Act 2006 and Owners Corporations Regulations 2007.

If an OC chooses to appoint a professional manager, it must be a manager registered with the Business Licensing Authority (BLA). The manager assists in the administration of the affairs of the owners corporation.

**SCA (Vic) recommends that the existing form be expanded to include information about multiple owners corporations.**

This is particularly important for sales off the plan in what will be large prescribed owners corporations.

***Multiple owners corporations***

The lot you are considering buying may be part of a multiple owners corporation. A Limited Owners Corporation may have been created to manage the common area that affects your lot including but not limited to the residential ground floor entrance, lift lobbies and corridors on each floor, lighting and cleaning to the common areas. You will receive a levy notice to contribute to the maintenance of the common property based on your lot liability.

You are also automatically a member of the Unlimited Owners Corporation called OC1. All lot owners from any Limited Owners Corporations belong to this owners corporation and contribute to the management of OC1. The management of OC1 may include but not limited to building insurance, public liability insurance, fire and safety management, rain water tank management, lift maintenance, cleaning of the basement, security maintenance and legal compliance. You will receive a levy notice to contribute to the maintenance of the common property based on your lot liability.

Some or all of the functions and obligations of the Limited Owners Corporation may have been delegated to the Unlimited Owners Corporation to manage on behalf of the Limited Owners Corporation. The plan of subdivision will reflect the obligations of each owners corporation on the plan.

10. Owners corporation insurance

1. **How does the obligation to obtain owners corporation insurance within the first 6 months of registration work in practice? Is this an obligation that is fulfilled by the initial developer or dealt with at the first meeting of the owners corporation?**

The requirement should remain for developers to take out the required owners corporation insurance for up to a period of six months following registration of the plan of subdivision.

In practice, the first meeting of the OC, following registration of the plan of subdivision, is held with only the developer being present. The developer still owns 100% of the lots, thus retains 100% of the voting rights, and makes decisions of many kinds including:

* ordinary resolutions [eg budgets, etc]
* special resolutions [eg rules, leases, etc]

It is therefore at the first annual general meeting that the developer as the initial owner and still holding all the voting rights will make the decision to take out the insurance cover for the benefit and in line with the obligation of, the Owners Corporation. The developer will then generally also fund the expense and then be formally reimbursed from the OCs funds once raised. Alternatively the developer pays the insurance in full on the day of registration of the Plan and at settlement recovers prorate the reimbursement from the lot owners. The adjustment is a contract provision. The budget still allows for the payment of insurance as the renewal will fall within this same first financial year of the OC (ie paid in advance for the ensuing year).

If insurance was not the obligation of the developer, then the taking out of the necessary insurance cover could be a drawn out process and leave the OC exposed to unnecessary risk, in the absence of the first annual general meeting and time for OC funds to accumulate. The Owners Corporations Act obligates the Owners Corporation to conduct their first annual general meeting within a period up to six months after the registration of the plan (Section 66 of the OC Act). The insurance must be taken out prior to settlements being effected.

We strongly agree with Qld strata laws such that developers owe duties to both current and future members.

1. **What remedies should be available to buyers of property if an owners corporation is not meeting its responsibilities under the Owners Corporations Act, such as not having obtained the correct insurance?**

We agree with the suggested specific remedy that a buyer should not be obliged to settle the purchase until the developer provides evidence that the necessary insurance is in place.

Although note that this practice is not supported by the ability for a sale to take place ‘off-the-plan’, or an OC to declare itself ‘inactive’, or self disclosure where an owner may not have the knowledge and/or access to the information that should be included in the section 32, contract of sale. Education of the purchaser is paramount to support such a remedy.

1. **What, if any, requirements under the Owners Corporations Act should an individual seller of property within an owners corporation be responsible for ensuring are complied with at point of sale?**

No change is necessary. The OC Act should remain as is.

Provisions within the OC Act are there for compelling reasons. We disagree with recent amendments following the s32 review, which provides escape clauses for ‘inactive’ OCs; not holding meetings, not setting fees, and not having in place insurance cover as required under the OC Act for a period of 15 months. This is despite Section 11 of the Sale of Land Act requiring insurance to be in place. It is the obligations of sellers under the Sale of Land Act that should be amended.

Amendments should also be made to require the seller to obtain an OC Certificate from the OC. Self disclosure is not acceptable where a professional manager is appointed, or in the case of a self managed OC, a volunteer manager or chairperson is appointed and has access to the records of the OC.

It should also be made clear that it is an offence to sell land within an OC without the required insurance in off-the-plan sales that occur before the plan of subdivision is registered.

There is also a need to ensure that at the point of sale, that a notice of acquisition is provided to the owners corporation for the records of the owners corporation; where an OC exists. The OC Act compels an owner to be responsible for providing their address to the OC (section 134 both to the vendor and purchaser). Although, it should be noted that there is no incentive or penalty for non-compliance. This is exacerbated when a purchaser does not understand that they have bought into an owners corporation or what an owners corporation is; which is still a common occurrence. Placing the obligation on the conveyancer, agent or similar party via the Sale of Land Act will provide a formal process that such a professional agent will understand and comply with on behalf of their client.