

Review of Vic strata laws

Issues Paper 1, Dec 2015

Conduct & institutional arrangements for estate agents, conveyancers & OC managers

Submission

11th March 2016

Julie McLean

National Training Manager

Ace Body Corporate Management

Level 1

222-225 Beach Rd Moridalloc Vic 3195

T: 1300 792 509

E: Julie.m@acebodycorp.com.au

Executive Summary

Ace Body Corporate Management is one of Australia's largest specialised strata management companies with over 20 years' experience and over 100 franchised areas located in all states. Ace manages over 60,000 lots Australia-wide and is responsible for managing property and assets worth over \$A20 billion.

The Strata industry in Australia helps oversee, advise or manage a combined property portfolio with an estimated replacement value of over \$1.2 trillion however in most states anyone can hangout a shingle and call themselves a strata manager.

As a company that specialises in Owners Corporation Management we engage with Real Estate Agents, Real Estate Property Managers and Conveyancers/Solicitors in the sale and transfer of property.

As a market leader, we are focused on the best outcome for a client, the lot owner. As a result we believe there are some shortcomings in the Sale of Land Act 1962 (Sale of Land Act), Estate Agents Act 1980 (Estate Agents Act), Conveyancers Act 2006 (Conveyancers Act) and Owners Corporations Act 2006 (Owners Corporations Act) to adequately educate and require continual education of the main players in the sale of property process.

Sale of Property - Real Estate Agents

- Make incorrect statements about the owners corporations Rules
- Claim common property car parking as car parking for the unit or townhouse they are selling
- Do not read any of the material provided
- Do not disclose the outgoings- OC fees when advertising a property
- Sell the dream not the reality
- Not accountable for any of the non or incorrect disclosures

Sale of Property - Conveyancers/Solicitors

- Frequently do not even realise there is an owners corporation (especially land estates)
- Frequently do not settle the property properly and will not assist their client in sorting out the mess.
- Frequently do not provide the Notice of Acquisition or Disposition at all or in a timely fashion (ie within 7 days)
- Forms are not filled in properly when they are supplied

- Fail to advise properly the difference between the dream and the reality to their client, including telling them what they have bought, what is on title (private property) or insurance requirements
- Common law remedies only for non or incorrect disclosures or omissions

Sale of Property – Owners

- Do not know that it is an OC or that ongoing fees are due and payable
- Do not read any of the material, or if they do they do not understand it
- Believe that the OC manager is the OC and makes all the decisions
- Confused if they have lived or own property in another state (laws are not harmonised)

As with Owners, Owners Corporation Managers, Real Estate Agents and Conveyancers/Solicitors education and continuing education is required to ensure that all the stakeholders and delivering the best possible outcome to each respective stakeholder is required.

Part A – Estate Agents and Conveyancers

2 Conduct of estate agents

25 What are your views on the merits of clarifying and directly expressing in the Estate Agents Act, the duties and obligations, if any, that an estate agent may hold towards buyers of property?

Real Estate Agents should be required to inform a buyer:

- When advertising, the fees of the Owners Corporation (in line with QLD and ACT)
- Of the existence of the Owners Corporation,
- What it means to living in an owners corporation
- Factual information of what is included in the purchase

3 Conduct of conveyancers

36 **Do the current professional conduct rules for conveyancers deal sufficiently with matters conveyancers should observe in the conduct of their functions?**

We are seeing a number of settlements not going through correctly but more alarming no desire or interest in helping the client fix the problem or “paying” for their mistake. The consumer is left out in the cold.

37 Are there changes or additions to the rules that should be considered? Should the rules align with relevant rules for legal practitioners wherever practicable?

They need to be accountable for their actions or lack of actions.

7 Institutional arrangements

54 Do you believe that the functions of the BLA are clear, and if not, how could the legislation be improved to clarify the BLA’s role?

There is no feedback. The industry as a whole would benefit from an annual report that covered:

1. Total number of schemes professionally managed
2. Number of complaints received
3. Nature of complaints
4. Number of Fines issued
5. Number of registrations cancelled
6. Rate of growth since the 2007

56 Are the powers given to the Director and inspectors under the relevant Acts sufficient?

Unable to answer this as without any annual reporting from the regulator, we as industry have no idea if the powers are effective or not.

The industry supports any measure that will increase the business acumen as well specific specialised knowledge for a strata management company. Current entry requirements are too low.

8 Victorian Property Fund

58 What do you think of the current basis for compensation claims against the VPF?

The basis for fraud compensation claims should be extended to include those relating to strata managers, instead of only relating to estate agents and conveyancers.

Similarly to estate agents and conveyancers, the strata sector [including strata managers] already contributes to the Victorian Property Fund.

The owners corporation industry already pays income into this fidelity trust fund such as strata manager registration fees, and fines. Guarantee claims and grants can be expended out of this fund. Thus, we recommend amendments that allow CAV and the Minister for Consumer Affairs to use this fidelity fund to right any wrongs, similarly to the way it pays guarantee claims on other sectors such as estate agents and conveyancers.

Currently, even though grants can be made out of the VPF fund for the strata sector, the VPF fund will not pay compensation claims for the strata sector to be paid from the VPF. This is because s79 of the Estate Agents Act makes it clear that owners corporations cannot claim on the Fund for defalcations committed by strata managers, even those who are licensed estate agents. The defalcation must be committed by an estate agent, and 'in the course of or in connexion with any business in respect of which the estate agent is or was required to be licensed pursuant to the Estate Agents Act'.

59 Should funds from the VPF be put towards education and training for estate agents, conveyancers and owners corporation managers?

Yes.

Similarly to the absence of a specific reference to conveyancers, the omission of a specific reference to strata managers is an omission that unfavourably impacts on the capacity to obtain grant moneys from the VPF to assist with the ongoing education and training of strata managers.

If the industry had access to the VPF we could develop and deliver much needed education program for Committees, and Strata Managers

Part B: Conduct of owners corporation managers

10 Registration and unsuitable managers

64 Are there benefits in aligning the eligibility requirements for an owners corporation manager to the extent practical with those of estate agents?

Yes, licensing is desperately needed along with Continuing Professional Development (CPD).

Victoria's current regulatory registration scheme requires no formal qualifications for strata managers and is now manifestly inadequate for the growing level of consumer risk.

A licensing scheme for strata managers would offer protection and provide greater transparency.

Funds managed, that are both collected and spent by strata managers in Victoria alone, are estimated at over \$1 billion per year.

NSW recently conducted a review of their licensing and qualifications for each level. In their review they looked wider at the level of qualifications for the Real Estate sector around Australia and I would ask that the regulator does the same.

It is absolutely critical that the qualifications and licensing levels for the strata sector are aligned.

65 What are your views on whether owners corporation managers should be separately licensed or be part of an estate agent's licence?

Separately licensed.

The role of a strata manager is very different to that of an estate agent.

NOLS [National Occupational Licensing Scheme] agreed in a separate licence category for strata managers, as proposed in its national licensing scheme.

The preferred structure of the licence type and qualification required should mirror the Property Services Training Package for Strata Management. This is a newly developed suite of qualifications for people working in the strata community management sectors. These qualifications comply with the Australian Qualifications Framework and are nationally recognised. State and territory Governments across the country use these qualifications and the associated units of competency to set the minimum educational requirements for licensed occupations, including licensed occupations in the property industry.

There are three levels of qualifications that would suit the Strata licensing regime:

1. Certificate of Registration - Where the regulator adopts a minimum education level for ancillary staff within a strata management company (eg certificate of registration) CPP30416 Certificate III in Strata Community Management.
2. Strata Manager -Where the regulator adopts a minimum education level for the Strata Manager within a strata management company (licensed strata manager) this should be the CPP40516 Certificate IV in Strata Community Management.
3. Licensee-in-Charge - Where the regulator adopts a minimum education level for Licensee-in-charge of a strata management company this should be the CPP50316 Diploma of Strata Community Management.

The renewal of the License should also include evidence of completion of CPD to be attached to the application for certificate or licence renewal. Failure to do so would result in the certificate or licence being cancelled.

66 Is it appropriate to extend the current regulatory criteria to include serious criminal offences?

Yes.

We supports SCA (Vic) opinion that:

- the manager's criminal record is relevant for BLA registration. We recommend a police check should be required for all individual strata managers but not all employees.
- agree with the previously proposed relevant criminal history – fraud, dishonesty, violence, drug trafficking. Where convicted or found guilty and it was punishable by imprisonment of 3mths or more, and within last 10yrs.
- there should be a mandatory requirement on the OC to have the fidelity guarantee option on their OC insurance policy.

67 What would be the benefits and costs of placing requirements on owners corporation managers to hold professional indemnity insurance as a condition of practise?

We support this. As a Franchise group we require all Franchisees to hold \$5 million.

11 Conflicts of interests and other duties in procuring goods and services

68 In your experience what is the current practice of owners corporation managers in relation to disclosure of commissions?

Strata Managers already have a requirement for disclosure for any commissions received. However, there are a number of strata management firms who not members of SCA who probably unaware of these requirements and as a result by repeating the disclosure requirements in the Owners Corporation Act 2006 as well as the CAV proforma contract of appointment

Financial Services Law

Product Disclosure Statement

The Corporations Act 2001, RG168 requires that a client must be provided with a Product Disclosure Statement (PDS) that describes the product being purchased prior to the issue of a policy. There is a tailored PDS regime for General Insurance products such as Strata Insurance.

RG 168.122 under Reg 7.9.15D states, a PDS for a general insurance product does not have to include information about commissions or other similar payments that might impact on returns s1013D(1)(e)).

Financial Services Guide

Information regarding remuneration including commissions is contained in the Financial Services Guide (FSG). The FSG also describes the service being offered and the details of any associations or relationships that may influence a strata manager in providing the service e.g. an authorised representative or broker. The FSG, with the Authorised Representatives (AR) Company Name, ABN, AR number and address, must be provided to the owners corporation and clearly states the maximum percentage of commission payable.

Insurance Quotations and Policy Schedule

Current disclosure:

Two of the main specialist strata underwriters in the Australian market, CHU and SUU, disclose the dollar amount of commission paid (including the GST) on both the insurance quotation and policy schedule. Dollar disclosure is not mandatory for general insurance product.

Recommended enhancement:

Dollar disclosure should be mandatory for insurers to provide on all strata insurance quotations and policy schedules.

Strata Management Agreements

The SCA (Vic) CoA is used as a template for most strata managers with some customisation. It has been adopted as the industry best practice.

The standard SCA (Vic) CoA provides consumers clear disclosure.

Section 1.2 outlines what authority the OCM has in arranging and placing insurance
Section 1.3 outlines the financial structure of any remuneration

Recommended enhancement:

On the CAV 'approved' Contract of Appointment form, consider having a simple tick of a box to state whether the OC want their strata manager to receive a commission or be paid a fee by the OC for insurance matters.

The standard industry practice is for the strata management agreement to state the percentage of insurance commission payable by the insurer or broker and any additional claims handling or administration fee charged by the Strata Manager.

Disclosure of insurance commissions also occurs at various other stages of the interaction between a strata manager and their OC client.

Strata Laws

Section 122 of the Owners Corporations Act requires managers to act honestly and in good faith, to exercise due care and diligence and not to make improper use of their position to gain an advantage for themselves or others."

In summary a strata manager receiving commission is disclosed:

1. At time of initial contract negotiations engagement between OC and strata manager. Where choice exists to utilise a fee for service model instead
2. Presentation of appropriate FSG to the OC
3. From CHU and SUU on the renewal and new business quote documentation

This is further reinforced by the obligations under S122 2006 OCA.

Many Owners Corporations prefer the fee/commission arrangement because it is a fixed cost and very efficient, particularly for small to medium sized schemes. A full fee-for-service model generally works better for larger schemes and many have already chosen such arrangements whether through their Strata Manager or via a Broker.

Recommended enhancement:

The CAV 'approved' Contract of Appointment form should be amended to ensure a consistent approach to disclosure, prescribing the specific information required in respect of insurance commission, rebates, discounts and fees.

Even greater transparency can be achieved by providing a breakdown of:

- The base insurance premium
- Levies i.e. FSL
- Duties i.e. stamp duty
- Taxes i.e. GST
- Commission and commission GST
- Total insurance premium payable
- Any fee added to the total premium e.g. a broker fee.

All insurers must be required to provide this breakdown of premium (excluding the broker fee) for all insurance transactions i.e. new business quotations and policy renewals each year.

A transition period of five years would need to apply so changes can be made on expiry of the current strata management agreement, which is typically renewed every three years.

Where brokers are involved in the insurance process, they would be required to provide the Strata Manager with the insurers' quotation or renewal notice. The broker fee amount and any other fees charged in addition to the premium.

This premium breakdown, together with details of the type of risks/cover, insurance amount, copies of the PDS and FSG will enable the Owners Corporation to be able to compare like for like.

We also recommend the 2006 OCA is amended to require the report of the strata manager (s126), to include disclosure of insurance commissions and fees:

- The insurance commission dollar amount and any additional fees have been disclosed
- The PDS, Policy Schedule and FSG are available, either electronically or a hard copy.

Education

Current disclosure:

Insurers are responsible for the training of Strata Managers acting as authorised representatives. Part of this is preparing the Strata Manager to explain to the Owners Corporation at an AGM or other meeting why they receive commission and the alternatives available.

Recommended enhancement:

We believe education of the Owners Corporation will help to increase trust. An educational flyer or key fact sheet on insurers' and industry bodies' websites will assist in explaining why commissions are paid and the remuneration options available.

An important action is to educate owners to ask the right questions and increase awareness of the disclosure requirements of strata managers and brokers in relation to insurance commissions and fees.

Summary

This question identifies the various levels of open disclosure already in place between an OC and a strata manager and a number of ways to further increase disclosure and improve transparency in the insurance process, particularly in relation to insurance commissions and fees.

We are aware that some insurance intermediaries do not break down the cost of insurance until the invoicing phase when cover is in place. It is of great concern when insurance information is 'dumbed down' to indemnity limits and price only, with no consideration for or communication of scope of cover, reputation, insurer credit risk and insurer claims payment track record etc.

It is important that any additional regulatory intervention regarding disclosure of insurance commissions and fees governs both Strata Managers and Brokers. This will ensure consistency of approach and transparency regardless of the distribution channel.

It is clear that disclosure can be improved during the quotation and renewal phase of the insurance process, with a breakdown of premium as suggested in this document and remuneration split between commissions and broker fees.

Education will also assist transparency, giving Owners Corporations a better understanding of the insurance process and why commissions and fees are paid.

We look forward to a more transparent environment which will build trust between the Owners Corporation and the strata management industry.

69 Do commissions and discounts have an adverse impact on premiums for insurance, and if so, how does this manifest?

No.

There is already a strong, multi-faceted disclosure regime in place relating to strata managers receiving commission on insurance.

We agree with SCA (Vic) who believes the practice of managers receiving insurance commissions is legitimate and in the best interests of the owners corporation. There should be no change to the current practice. If government moves to outlaw this practice then at least one year's transitional lead time is required before implementation in order for managers to be able to adjust management fees commensurately at the next AGM.

We briefly reiterate the following points in support of the current practice:

- a) Owners corporations must insure as a basic function, and this is one of the key functions managers perform for owners corporations. Managers are trained and audited on the area of specialised OC insurance.
- b) To do this, Managers must by consumer protection law, under the Financial Services Reform Act (FSRA), be an Authorised Representative [A/R] and registered as such with ASIC. Without managers doing this, the OC would need to either appoint an owner to handle all insurance matters or arrange a meeting with an A/R from the insurance company / broker to arrange the required cover.
 - i. This is confirmed and reiterated by referring to the Business Licensing Authority [BLA] web site www.bla.vic.gov.au, in the BLA / Consumer Affairs Victoria publication, "Guidelines for Registered Owners Corporation Managers".
- c) It is not improper to receive insurance commissions and does not contravene manager's s122 duties in any way [and is also the case in all other jurisdictions of Australia]
 - i. In the matter of *Real Estate Services Council v. Alliance Strata Management Limited*, the Supreme Court of NSW saw the receipt of insurance commissions of which the owners corporation were informed of, as entirely legitimate.
- d) It is the owners corporation not the manager that decides where to place the insurance
- e) Insurance commissions are the result of an administrative cost saving [eg maintain claims history, collect and pay premiums, and attend to administration of claims]. Rather than an extra expense to the OC, the commission paid to managers is in compensation for contracted services.
- f) Management fees are already currently subsidised by insurance commissions [by about 20%]. In the absence of insurance commissions, management fees would increase commensurately to compensate.
 - i. SCA Strata Benchmarking Projects have been conducted periodically for many years. According to these industry benchmarking study reports, insurance commissions make up about 14% of an owners corporation management business' income. Only two other sources rank higher - management fees and disbursements.
- g) Premiums are the same for owners corporations whether the owners corporation deals directly with the insurer or uses the services of a manager to arrange the insurance.
- h) Conditions applicable to the manager receiving insurance commission as endorsed by SCA (Vic) include that the interest of the client is the paramount criterion.

70 What are the non-regulatory approaches that could be considered to ensure commissions and other payments do not distort the market?

We support SCA (Vic) who supports the outcomes of the previous review whose outcome was the 2014 Bill.

In essence, for commissions this would require prior written disclosure [& the amounts in the manager's report].

It would also require disclosure of beneficial relationships with suppliers.

As noted, proposed regulatory changes in the 2014 Bill regarding strata managers were never enacted. Nonetheless, SCA (Vic) has decided to adopt these changes in our CoA in order to 'raise the bar' with appropriate professional practice guidelines and ethical standards.

SCA (Vic) publishes an endorsed Contract of Appointment - Owners Corporation Manager [CoA]. All SCA (Vic) members are entitled to use this at no cost as a benefit of membership and as a key differentiator between members and non-members. 93% of members use it.

A new version of the SCA (Vic) CoA is about to be published in Feb 2016. This up to date version of the SCA (Vic) CoA is version 4.

12 Unfair terms in management contracts

71 What are the main concerns about unfair contract terms in management contracts?

Again, there are a number of strata management firms who not members of SCA who take the opportunity to write unfair termination conditions.

We don't support any changes that means the Owners Corporation can not use section 82 to quarantine certain resolutions. The vast majority of committee are dysfunctional and do not operate within the requirements of the Act. If an Owners Corporation wishes to restrict the terminat

It is both appropriate and legitimate, in the SCA (Vic) CoA, for an OC to quarantine (s82) a particular decision, as per the Act, to an ordinary resolution decision at a general meeting. Such a decision of an OC cannot be considered 'a procedural step other than as provided in this Act'. It is a step provided for by section 82 of the OC Act.

SCA (Vic) would be concerned if there were changes to restrict the authority of an OC to exercise its rights that currently and would continue to exist under the OC Act.

Section 82 of the OC Act provides that an OC may, by ordinary resolution at a general meeting, determine that a matter or type of matter that may be determined by ordinary resolution may be determined only by ordinary resolution of the owners corporation at a general meeting.

If this power is provided to the OC under the OC Act, how could it then be described in the 2014 Bill as a 'procedural step, other than as provided in this Act'.

It is not appropriate that the decision threshold be raised by requiring a special or unanimous resolution.

CAV's own Guide says that removing a manager before the expiry of their contract raises complex legal and contractual issues and therefore, to remove a manager, an owners corporation should arrange a general meeting.

Strata managers are the servants of all lot owners in an owners corporation, and all lot owners should have a say in the strata management of their owners corporation.

The SCA (Vic) Contract of Appointment [CoA] deals with assignment. The ability to effect an assignment of the CoA directly affects the ability to sell an Owners Corporation management business or a portfolio of properties, and opinions differ on whether assignment is allowed or not. This is a critically important issue which affects the value and viability of many businesses.

SCA (Vic) advises managers that it will always be desirable, and perhaps necessary for the appointment of the assignee to be confirmed by resolution by the Owners Corporation, either by postal ballot or at a general meeting where it is included in the notice of meeting.

This should not be regulated, just as it is not regulated for other sectors such as estate agents selling rent rolls, lawyers selling their practice, etc.

We believe the assignment clause of the SCA (Vic) CoA strikes the appropriate balance.

It says that in assigning the CoA to a new manager, the OC must not unreasonably withhold consent to the appointment of the new manager. If a proposed new manager provides written evidence of registration as a manager pursuant to Part 12 of the OC Act and that the new manager is a current member in good standing of SCA (Vic), then the OC must approve the assignment of the Appointment to the new manager. The new manager must also covenant to comply with the CoA.

SCA (Vic) also provides a separate Deed of Covenant that members are entitled to use.

It should be noted that every CoA is individually negotiated and, if agreed, amendments made via the special conditions section.

That said, SCA (Vic) would support the outcomes of the previous review whose outcome was the 2014 Bill. In essence, relating to assignment, this would mean it is *prima facie* unreasonable to refuse if a full member of an approved body.

Terms that require an excessive period of notice [greater than 3 months] for the early termination of a management contract should be prohibited.

Terms that require a pre-determined amount to be paid to the manager on termination should not be prohibited. It can be entirely legitimate if done appropriately. We did consider whether this was a better approach and changing our CoA to something like this, though it was felt it was too difficult and we did not proceed. Equally, we are happy to provide for a pre-determined amount if required to do so. It should be noted that every CoA is individually negotiated and, if agreed, amendments made via the special conditions section. Pre-determined amounts that are disclosed can actually protect consumers, and if the government policy was to choose to regulate by requiring a pre-determined amount, it could be for example an amount not exceeding 35% of the gross revenue of that owners corporation property.

72 Are there other types of unfair terms that should be considered? If so, what are they and how common are they? Why might they be unfair?

No.

13 Ending long-term management contracts

73 Should any distinction be drawn between the required contractual terms for initial and subsequent management contracts? If so, why? How would such a distinction be drawn?

No.

Any regulation of a maximum term for strata management contracts may significantly affect the value and viability of Victorian strata management businesses.

Like any contract the term should be open to negotiation in the interest of both parties to the contract. There are many and varying factors to take into account when agreeing to length of management tenure, with the most common being the amount of work, time and dedication to manage a new build through its first initial years after completion. A more common reason for not limiting contracts is that longer term contracts may offer greater competitive rates for clients, whilst offering a greater guarantee of the client's commitment to the ongoing viability of the strata management business.

A 1 month term is obviously too short, 100 years is too long to be fair, but what is reasonable? Some managers prefer 1 year contracts anyway, with re appointment at the OC's annual general meeting. 1 year is the most common.

SCA (Vic) has adopted the maximum term of 3 years as industry best practice.

To ensure competitive rates for consumers and business assurance for Victorian strata management businesses, SCA (Vic) recommends that the maximum term for strata management appointment not be regulated. If the government's policy intends to regulate, then and only then, adopt the SCA (Vic) current recommended position regarding the maximum term of CoA of 3 years.

There is currently no regulated term. SCA (Vic) does not believe it needs to be regulated.

There are adequate general consumer protections in place currently.

There should not be any distinction between initial management contracts entered into by the developer and subsequent management contracts.

Nor should there be any distinction between management contracts for 'large' and 'small' OCs. Do not regulate. If the government's policy intends to regulate, then and only then, adopt the existing regulatory division of large and small – ie prescribed and non-prescribed.

74 What is your view as to contractual terms for the renewal of management contracts? For example, should there be any rules about terms such as automatic renewals or renewals at the prerogative of the manager only?

To ensure the protection of practising strata managers, and that the OCs themselves are not non-compliant or exposed to increased risks, SCA (Vic) considers the automatic renewal provision of the CoA is legitimate and fair.

SCA (Vic) recognises that unfortunately it is a common occurrence that owners within owners corporations fail to turn up to their annual general meetings (AGM), which is where the appointment of the manager is tabled. When no owners turn up to the meetings no decisions can be made, which starts to increase the risks OCs are exposed to with regard to compliance and failure to maintain the property.

SCA (Vic) understands that should a contract not roll over automatically and a decision to re-appoint the manager is yet to be made, due to the OCs inaction, the delegated authority to the strata manager to act on behalf of the OC could be voided, and thus leave the OC exposed as mentioned above.

SCA (Vic) also informs managers that it would be advisable to renew the CoA upon expiration of the initial period. SCA (Vic) in no way condones a manager deliberately scheduling an AGM so automatic roll over applies by default.

It is worth noting the CoA only rolls over for a period up to one year even if the term was two, three or more years for example. It is also part of the new standard SCA (Vic) Contract of Appointment, that a contract may only roll over until the next annual general meeting of the OC.

SCA (Vic) recognises that many other contracts are much more onerous eg five year rollover for lifts. Even landlord/tenant arrangements have automatic rollovers.

Also note, the Act allows 15 months between AGMs. If there is no automatic renewal, then the AGMs would need to be held every 11 months. This would not work.

A shorter term of rollover such as monthly does not work, as the standard functions of a strata manager are very unevenly spread throughout the year, and it is only automatic renewal of not less than a one year period that makes sense.

Despite the “empowering of owners” and promotion of self-managing, generally there is a common lack of interest by owners [eg hardly any turning up for AGMs]. This apathy, in the absence of managers, would lead many owners corporations to become dysfunctional.

But if owners are unhappy, they will act to change strata manager.

In terms of renewals at the prerogative of the manager, a strata manager should not have an unfettered unilateral right to an option, but there are currently general consumer protections in place that adequately deal with this.

75 Are there other issues that require a regulatory response relating to long-term management contracts?

The obligation under section 68 of the Owners Corporations Act should be extended to developers who maintain control of an owners corporation by holding a majority of the lot entitlements.

Also, s68(3) says it applies for a period of 5 years from the registration of the plan of subdivision. This time period should be extended to 10 years.

Early termination of a strata management contract is no excuse for the strata manager to claim a sum of money that equals the whole remainder of the fees for initially agreed term of appointment. They should only claim for 'damages' ie loss of profit.

Strata managers should not take such damages, which they believe they are owed for early termination, from the funds of the OC without authority to do so. If in dispute, the strata manager needs to lodge a claim for this at VCAT

Professional strata managers hold these funds in trust for the OC. As a professional strata manager they are under a duty under the Owners Corporations Act 2006, and as a fiduciary, to act in good faith.

Removing funds from the OCs account when not entitled to do so, is a breach of a strata managers duties. Though not requiring a regulatory response, a non-regulatory way of conveying the current law may be useful.

14 Managers' conduct around voting

76 How can concerns about managers' influence on voting be addressed?

The current strata laws, Australian Consumer Law, and powers of VCAT are sufficient.

Existing provisions already mean that a strata manager cannot, for example, use proxies to vote on issues where the strata manager has an interest in the outcome such as the management contract.

The prescribed proxy form has provision for specific direction on voting.

The nature of the role of a strata manager needs to be understood. Strata managers have secretarial powers; managers do not make decisions. A strata manager is an administrator providing secretarial type services. Strata managers implement the decisions of the owners corporation, they do not make decisions.

15 Financial transparency

77 How can concerns about fraudulent financial conduct be addressed? Would it be preferable in the context of financial transparency and accountability to require separate owners corporation funds to be kept in separate accounts?

Yes. However it must be remembered that no organisation is immune to fraud and its consequences. If not addressed appropriately, fraud will happen.

One of the biggest risks a strata management business faces is the possibility that an employee commits fraud by, for example, creating fictitious contractors or invoices.

Strata managers and owners corporations agree on appropriate risk management systems, authorisation processes, and systems, for their owners corporation clients.

Our Franchise organisation trains our franchisee's to reflect on the following:

- How the company will ensure day-to-day proper supervision of employees engaged in the business.
- What steps the company has taken to ensure employees will continue to comply with the *OC Act 2006* and regulations, and any other law relevant to the conduct of the business.
- What procedures are established to ensure the business is conducted in accordance with the law and good practice and to monitor that the business continues to do so.
- As an employer, look at their recruitment processes and consider the appropriateness of reference and police checks on new employees

78 What proportion of managers still use pooled accounts, and what would be the realistic costs and time required to transition to the use of separate accounts? Where possible, include the basis for these estimates.

It is a requirement of our Franchise agreement that a separate bank account is opened in the name of each Owners Corporation.

We would support the requirement for all strata management companies to do this.