



CITY OF MELBOURNE

18 March 2016

Simon Cohen
Director, Consumer Affairs Victoria
C/- Consumer Property Law Review
Policy and Legislation Branch
Via email: consumerpropertylawreview@justice.vic.gov.au

GPO Box 1603
Melbourne VIC 3001

Phone 61 3 9658 9658
Fax 61 3 9654 4854
www.melbourne.vic.gov.au

DX210487
ABN 55 370 219 287

Dear Mr Cohen

CONSUMER PROPERTY LAW REVIEW - ISSUES PAPER 1

The City of Melbourne management welcomes the opportunity to provide a response to Issues Paper 1 of the Consumer Property Law Review (the 'Review').

The State Government should be commended for undertaking a review of the consumer property legislation. The current legislative framework was drafted at a time when the current type and form of development was not envisaged. The City of Melbourne has become increasingly concerned with the lack of inter-connectedness between key pieces of legislation and out-dated practices as they relate to property.

The Review presents a rare opportunity to enhance the current legislative framework and these interactions, with the underlying objective of achieving a structure in which the health and wellbeing of occupants and the safety, sustainability and resilience of buildings is realised in a fair and efficient manner. However, with this in mind, the City of Melbourne considers the scope of the review is too narrow, and should also consider the *Residential Tenancy Act 1997* and the *Public Health and Wellbeing Act 2008*, particularly given their role in relation to rooming houses.

Housing is one of the most complex issues faced by cities today and Melbourne is no exception. A single apartment building can now contain the same number of dwellings and commercial/ retail uses found in a small town. The legislative framework is not suited to dealing with large, complex, multi-use buildings. This results in inefficiencies, frustration and in some cases the inability of local government to deal with matters of health and safety, whilst also causing an additional burden and often confusion for not only local government but also property owners.

The City of Melbourne supports legislative change that provides greater clarity of the roles, responsibilities, obligations and appropriate training requirements for estate agents, conveyancers and owners corporation managers to start to address the concerns listed above.

Changes to the function, powers and operation of owner corporations will also play a critical role. The City of Melbourne intends to provide a further submission addressing the *Owners Corporation Act 2006* and its deficiencies during phase 2 of the Review.

While legislation is critical in guiding the outcomes desired by the City of Melbourne it is only one part of the solution. Deeper engagement, education, advice and resources are greatly needed across the sector. For example, apartment owners need a better understanding of the distinct roles, responsibilities and processes associated with their building.

The City of Melbourne has provided further feedback to relevant questions raised by the issues paper in attachment A.

Yours sincerely

Kate Vinot
Director City Strategy and Place



ATTACHMENT A: CITY OF MELBOURNE MANAGEMENT SUBMISSION

CONSUMER PROPERTY LAW REVIEW ISSUE PAPER 1

Issues Paper 1: Conduct and institutional arrangements for estate agents, conveyancers and Owners Corporation managers

Submission deadline: 11 March 2016

Part A – Estate agents and conveyancers

Licensing of estate agents and conveyancers

- 5) Is the definition of conveyancing work sufficiently broad to capture all those who should be licensed? If not, how could it be amended?

Related comment: Anecdotal evidence indicates there is a lack of consumer knowledge about the role of the conveyancer and to what depth the conveyancer will investigate and make recommendations stemming from the strata related documentation. This is particularly true given the trend toward flat-fee conveyancing, which leaves less scope for in-depth investigations. Rarely are strata managers contacted by conveyancers with questions regarding the strata paperwork. This could indicate a lack of rigor or lack of understand around the complexities of strata.

The Australian contractual system still relies heavily on the legal principal of caveat emptor (or “let the buyer beware”). As strata developments become larger and more complex the buyer needs better “tools” to inform themselves sufficiently to “beware”. It is fair to assume that majority of purchases of a strata property are not well-placed to assess the physical, financial and social health of a strata community. More consumer engagement and education is needed to ensure consumers know how to access and recognise good advice.

- 6) What is your view as to the present training for estate agents and/or conveyancers? Are there any additional training requirements that should be mandated? Are any of the current requirements unnecessary?

Training should be set with a view to existing and future trends. We have identified two critical gaps in the existing training:

- a) **Strata:** The residential strata sector is booming. Apartments are now built at a similar rate to detached housing according to the latest figures from the Australian Bureau of Statistics (46.9 per cent of total starts). This is a major departure from the traditional Australian lifestyle and a trend set to strengthen. Training needs to reflect this shift and ensure real estate agents and conveyers have the depth of knowledge required to help customers understand what it means to buy into a strata titled building.

For a building to function smoothly, estate agents, facility managers and strata mangers need to work together. As such, each of these parties needs to understand the roles, responsibilities and challenges faced by other property professionals.

- b) **Sustainability and climate resilience:** Australia’s climate is changing. The City of Melbourne has identified four priority climate change impacts relevant for the municipality. These are extreme heat, drought and water scarcity, sea level rise, and extreme storm and flash flood. Climate change projections show that the occurrence of these events will increase, as well as the intensity.



ATTACHMENT A: CITY OF MELBOURNE MANAGEMENT SUBMISSION

CONSUMER PROPERTY LAW REVIEW ISSUE PAPER 1

Climate change adaptation is the principal way to deal with the impacts of climate change (see [Increase the climate resilience of your building fact sheet](#) for more information). It can help to manage risks, adjust economic activity and reduce vulnerability. For owners corporations and managers it can also improve long term business certainty.

Sustainability and resilience of our buildings is increasingly important to consumers and governments across Australia. The sustainability features of buildings have a direct impact on the comfort and long-term affordability of a property. As outlined below, sustainability has been identified by buyers as an important asset by buyers.

Real estate agents are trained to identify and sell traditional benefits of homes (eg, location, aspect, proximity to schools etc) however the majority of real estate agents do not currently have the skills to identify and sell sustainability features.

City of Melbourne's Future Living Paper formed the basis for the City's housing strategy, Homes for People. 84 per cent of all participants surveyed for Future Living identified poor quality of design and amenity as one of their top five housing issues, including poor environmental performance. This demonstrates the value to consumers of environmental sustainability.

Further, the Department of Environment, Land, Water and Planning and the Office of the Victorian Government Architect [Better Apartments project](#) identified energy and water use as the fifth (out of fourteen) most important issue facing apartments.

LJ Hooker has recognised the importance of sustainability through their [Liveability program](#). Amongst other things, the program trains real estate agents to identify and promote the sustainability features of homes.

The need for sustainability and climate resilience education is also critical for strata and facility managers as existing apartment buildings will increasingly need to adapt climate change pressures, in particular extreme heat, water ingress from storms and flash floods, and the impact of increasingly large utility bills.

As an example, strata and building managers currently have a good capacity to seek traditional strata contractors, for example insurance brokers and trades people. However, there is a lack of knowledge about to find and assess energy efficiency and sustainability contractors for the sector.

2 Conduct of estate agents

- 22) What would be the merits or otherwise in having some established principles about the role of estate agents in the Estate Agents Act and/or setting out the duties for the conduct of an estate agent in relation to sellers, buyers, landlords and tenants (i.e. would it clarify expectations about the role of the agent and their conduct)?

There is merit in both setting and promoting principles about the role of estate agents in relation to sellers, buyers, landlords and tenants. Consumers will benefit if there is clear, accessible, commonplace information available to help them understand the role and responsibilities of real 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?



ATTACHMENT A: CITY OF MELBOURNE MANAGEMENT SUBMISSION

CONSUMER PROPERTY LAW REVIEW ISSUE PAPER 1

Setting out the duties and obligations that an estate agent has, specifically in relation to the buyers of a property, would be beneficial to consumers. Real estate agents face a duality in their customer base while selling a property. This can lead to mistrust between parties and the seller is often seen as the primary customer. Clarifying duties and obligations is a foundational activity for reducing real or perceived customer bias.

Any changes in the act will need to be coupled with a public engagement campaign to ensure consumers are aware of the changes and there is a material impact.

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.

The strata sector currently contributes to the Victorian Property Fund through strata manager registration fees, and fines. We recommend amendments that allow CAV and the Minister for Consumer Affairs to use VPF to right any wrongs, similarly to the way it pays guarantee claims on other sectors such as estate agents and conveyancers.

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

Yes. Specifically, this fund should support educational needs to prepare property professionals to fill current industry knowledge gaps and respond to future trends.

Improving the climate resilience of existing buildings is one example of an educational need to help the property sector respond to future challenges.

Note that the omission of a specific reference to strata managers and conveyancers unfavourably impacts on the capacity for these property professional to obtain grant moneys from the VPF to assist with the ongoing education and training.

Part B: Conduct of owners corporation 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. 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. For example, funds managed by strata managers in Victoria alone are estimated at over \$1 billion per year.

A formalised training process would help improve consumer confidence in their strata managers. It would also offer protection and provide greater transparency.

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

The licenses should be separated as the role and obligations of a strata manager is very different to that of an estate agent. However, efforts should be made to ensure these sectors understand



ATTACHMENT A: CITY OF MELBOURNE MANAGEMENT SUBMISSION

CONSUMER PROPERTY LAW REVIEW ISSUE PAPER 1

each other's roles, responsibilities and challenges in order to support the smooth operation of buildings.

66) [Is it appropriate to extend the current regulatory criteria to include serious criminal offences?](#)

Yes. The review should consider whether and how managers should be screened with a criminal record check as part of the licencing arrangements.

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?](#)

Owners corporation managers should hold professional indemnity insurance as a condition of practise. Anecdotal evidence suggests the vast majority of managers already insure in this way so the cost will be negligible, but the approach is inconsistent. Regulating indemnity insurance is another positive step in standardising across the sector.

68) [In your experience what is the current practice of owners corporation managers in relation to disclosure of commissions?](#)

City of Melbourne agrees with Strata Community Australia (Victoria) that the key recommended enhancements to current disclosure requirements are:

- Mandatory dollar disclosure by insurers and brokers of insurance commission and commission GST on all strata insurance quotations and policy schedules for new business and renewals to be shown to the OC when making decisions. They should not see only the consolidated total premium payable amount.
- Amendments to the Owners Corporations Act 2006 (OCA 2006) are to require dollar disclosure of insurance commissions and fees on a yearly basis.
- The (OCA 2006, CAV 'approved' CoA form) to be more prescriptive regarding the breakdown of insurance related commissions, rebates, discounts and fees with a five year transition period.
- Changes to the report of the strata manager (s126), to include disclosure of insurance commissions and fees [as it does for the details of the PI insurance].

As with many other strata related areas, consumers will benefit from being presented with clear information about insurance and associated commissions.

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?](#)

There is a balance to be struck here between the viability of strata management businesses (of whom many are small businesses) with the needs and rights of the consumer.

Typically in a new building, the original management contract is sourced by the developer rather than the owners corporation proper. In addition, the role of the strata manager can be additionally complex while the owners corporation is established. Thus, the circumstances during the initial period are unique when compared to the subsequent contracts.

During the rollout of City of Melbourne's apartment programs, some owners corporations have expressed discontent with the length of strata managers contracts where they were appointed by the developers. While it is important to have a manager in place early, we need to ensure owners corporations are not encumbered by lengthy management contracts they did not appoint. It makes



ATTACHMENT A: CITY OF MELBOURNE MANAGEMENT SUBMISSION

CONSUMER PROPERTY LAW REVIEW ISSUE PAPER 1

sense, at least for developer appointed contracts, to limit the contractual terms. In this instance a maximum of three years seems reasonable.

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?

Particular circumstances may require contracts to roll-over automatically. Specifically, if an owners corporation fails to get a quorum at their AGM it is logical that the contract rolls-over in order to protect practising strata managers and ensure OCs themselves are not non-compliant or exposed to increased risks. Any automatic roll-overs should be valid for one year only.

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?

Mandating individual accounts will not in itself resolve fraudulent behaviour. However, there is a high level of misinformation, confusion or simply a lack of knowledge amongst apartment owners. Given this, transparency (real or perceived) and simplicity should be primary drivers in designing financial mechanics for the strata sector.

Additional comments

Role confusion and lack of engagement – beyond regulation

During the rollout of City of Melbourne's numerous apartment programs, it has become evident that there is significant misinformation, confusion and lack of knowledge amongst apartment owners. Of course there are also leading owners who are extremely knowledgeable about strata regulations and norms but these are the minority.

It is common for an apartment owner to speak of "getting permission" from a strata manager or needing to "convince" the strata or facility manager. This is a reflection of the role confusion that exists in the sector.

Many strata managers speak of a lack of engagement from the owners corporation. This means the work required to maintain the building falls to a few individuals and the strata manager. Where a building is highly disengaged, this workload falls more heavily on the strata manager who is often forced to play a very active role to keep the building to minimum viable functionality. This may also contribute to the role confusion.

More work is needed to understand the causes and solutions to the role confusion and the engagement challenges in the sector. Certainly these issues will not be solved through regulation alone.

As the *Better apartments – a discussion paper* identifies, the number of apartments being approved and built in Victoria makes up nearly one third of all new dwellings approved across the state – more than at any time in our history. The boom in apartment living provides an opportunity to for local and state governments to collaborate on community capacity building in the strata sector, in partnership with SCA and academic researchers.

Climate change and the built environment

Australia's climate is changing. The City of Melbourne has identified four priority climate change impacts relevant for the municipality:

1. extreme heat



ATTACHMENT A: CITY OF MELBOURNE MANAGEMENT SUBMISSION

CONSUMER PROPERTY LAW REVIEW ISSUE PAPER 1

2. drought and water scarcity
3. sea level rise
4. extreme storm and flash flood

Climate change projections show that the occurrence of these events will increase in number and intensity. These issues will have a direct impact of the strata sector. For example, occupant heat stress or death during heatwaves, rising energy bills due to increased heating / cooling, and costly water ingress issues.

Climate resilience should be considered as a key part of the decision-making process for building redevelopment and maintenance. We recommend the Victorian Government to actively investigate ways to encourage the integration of sustainability and resilience mechanisms into the strata sector using a combination of regulatory changes, education and incentives. Additional work is required to understand the most effective legislative measures to support this outcome; some areas for consideration may include:

- Incentive based OC management fees (distinct from commissions) that encourage sustainable practices.
- Lowering decision-making thresholds for projects with clear sustainability outcomes, particularly where there are direct and proven savings on utility bills (eg measurable reduction in energy or water consumption).
- Legislation to mandate actions (eg switching to LED lighting).

Consulting with apartment owners

The property professionals involved in the strata sector are well represented by peak bodies such as Strata Community Australia, Facilities Management Australia and Real Estate Institute of Victoria. Owners in strata titled buildings do not have the benefit of a united representative body. As such, there is a risk that the voices of apartment owners – those most affected by any regulatory changes – will not be heard loudly in this review.

City of Melbourne has strong communication networks to connect with apartment owners and would be happy to support CAV to engage with this sector through this review process.