**Consumer Property Law Review**

**Submission**

**Owners Corporation Bank Account**

**This submission seeks amendments to the Owners Corporations Act 2006 to strengthen the power of an owners corporation to control bank accounts belonging to the owners corporation.**

Part 3, Division 1, Section 27(1) provides for an owners corporation to open and operate bank accounts. S27(3) provides that “all fees levied by an owners corporation … must be paid into a bank account of the owners corporation or of the manager of the owners corporation”.

**The words “or of the manager of the owners corporation” should be deleted.**

Where a manager is collecting on behalf of the owners corporation fees or any other monies owing or belonging to the owners corporation, all such monies should be deposited by the manager into the owners corporation bank account. They should be used by the manager only to defray expenses which are the liability of the owners corporation. They should not be used by the manager to strengthen cash-flow or any other aspect of the manager’s business nor to defray expenses which are the sole liability of the manager.

**Part 3 Division 1 of the Act should be further strengthened to guarantee probity and**

**transparency on the part of the manager in accounting to the owners corporation for the operation of the owners corporation bank account.**

The reason for proposing this amendment is that currently the owners corporation of XXXXXXXXX, XXXXXXXXXXXXXXXXXX, has no access to the owners corporation bank account and no means of verifying the report of the manager on the operation of that account. The manager, having no contract of appointment as OC manager, has been operating as de facto manager since 2008. The manager has repeatedly refused to provide anything more than an unsubstantiated monthly report on the operation of the owners corporation bank account. Any potential defalcation cannot be verified.

The manager has rejected the frequent request by the owners corporation for access to bank statements and other original evidence to support the monthly report on the operation of the

owners corporation bank account. There is some reason to believe that the manager has made use of funds from the owners corporation bank account for purposes other than meeting liabilities of the owners corporation. There is *prima facie* evidence that the manager has withdrawn from the owners corporation bank account amounts larger than the amounts required to pay invoices

rendered to the owners corporation for the provision of goods and services.

By maintaining secrecy over the owners corporation bank account, the manager effectively

controls the annual budget of the owners corporation, since estimates of future expenditure are based on the manager’s report on expenditure for the preceding year. This means the manager also controls the level of contributions from each lot owner in the strata plan, since they are based on projected expenditure in the annual budget. The owners corporation is thus deprived of any means to restrain budget increases or to verify their necessity.

**A new sub-clause is proposed:**

**“The Manager of the owners corporation must provide to the owners corporation a monthly report on the operation of the bank account, accompanied by all original supporting**

**evidence, including but not limited to bank statements, tax invoices, bills, receipts and all other primary evidence of income to and expenditure from the owners corporation bank**

**account”.**