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Consumer Property Law Review  
Policy and Legislation Branch  
Consumer Affairs Victoria

[consumerpropertylawreview@justice.vic.gov.au](mailto:consumerpropertylawreview@justice.vic.gov.au)

## **ACSV Submission to Issues Paper 2**

The Association of Consulting Surveyors Victoria (ACSV) currently represents 120 member firms that have as principals or employees the vast majority of Licensed Surveyors that produce, lodge for certification and manage the plans of subdivision that create the more than 30,000 new parcel titles (including both land and building parcels) that come into existence in Victoria each year. Our members' clients range from the largest of national and international development companies through to a 'mum and dad' individual 'developer', undertaking a once in a lifetime dual occupancy development of their family home.

Our members are the originators of plans of subdivision that create subdivisions involving owners corporations, act as advisors to individual property owners and developers, large and small, whilst liaising closely with Land Victoria on an on-going basis to maintain and enhance the quality and usability of such plans of subdivision. Our members also interact with the public, owners corporation managers, solicitors, estate agents and conveyancers throughout the state on a regular basis in relation to title dealings, subdivision, redevelopment of existing plans and owners corporation management. On that basis the Association's members have a distinct interest in a number of particular aspects of the Consumer Property Acts Review Issues Paper 2.

We also note that the Subdivision Act 1988 covers every type of subdivision in Victoria and that Part 5 of that Act needs to be considered in the context of the full Act and all Regulations associated with the Act, not just in isolation. Additionally the context that all types of owners corporation subdivisions, ranging from some dual occupancy two lot subdivisions, through unit developments of 3 -100+ lots, low rise apartments, apartment towers, complex mixed use developments, vacant lot developments incorporating shared facilities (such as recreational complexes and golf courses) and even rural subdivision situations, fall within Part 5 requires consideration in evaluation of potential impacts of legislative change.

ACSV firmly believes that a number of the matters raised in the Issues Paper have significant overlap between the interests of efficient owners corporation management, appropriate title definition and dealings affecting owners corporation plans which require significant workshopping of any proposals for change, involving all relevant stakeholders (of which ACSV is a significant member). We believe that such workshopping should ideally occur to a timeline to enable outcomes to be incorporated into the proposed Options Paper.

As an organisation ACSV will generally limit the comments in this submission to matters within the Issues Paper that directly relate to our members areas of expertise and experience.

Accordingly we provide specific responses as follows:

### **Financial management of owners corporations**

*Q. 7. What are your views about the operation of the benefit principle? What is the experience of your owners corporation in applying the benefit principle?*

Whilst ACSV acknowledges that this is a 'management' issue not a 'surveyor/subdivision' issue, our members do receive many requests for advice in relation to this issue. ACSV believes that owners corporation structures and rules cannot deal with every eventuality. In our members experience the 'Benefit Principle' is an essential component of Owners Corporation management in dealing with situations where a special fee or charge may apply. ACSV believes that this principle provides a degree of flexibility that is necessary to cover all situations and should therefore be more widely applied by owners corporations. However, it is our view that some corporations and/or managers may be inhibited by a lack of surety in application.

We believe that the current legislative prescription is sufficient, noting the VCAT advice that the assessment is 'a matter of judgement, not science' and should be 'within a range of what would be reasonable' and that enhancement of the 'Benefit Principle' should be dealt with by education rather than legislation.

### **Meetings and decisions of owners corporations**

*Q. 34. What are your views about the appropriateness of the voting thresholds for ordinary, special and unanimous resolutions, and arrangements for interim resolutions?*

Whilst surveyors are not directly involved in the voting process, the inability to be able to obtain appropriate resolutions (especially unanimous resolutions) is a major hurdle to efficient and desirable outcomes in many cases. This is discussed in more detail in our response to Q's 60 and 63.

### **Part 5 of the Subdivision Act**

*Q. 60. What are your views about the process for the sale/development of apartment buildings?*

ACSV believes that the issue of redevelopment of owners corporation subdivisions (not just apartment developments), either in whole or part, is a significant problem which needs to be addressed.

The requirement for a (100%) unanimous resolution (and then also for mortgagee consent for all lots) for dealings with even the smallest impact on areas of common property can make it almost impossible to redevelop or even make minor modifications to existing subdivided developments.

Some buildings inevitably reach the end of their useful life span and developments which may have been appropriate 'in their day' may become outdated, inefficient and inappropriate in light of modern standards and market expectations. Redevelopment of unsustainable buildings, addressing of population demands and refocussed density targets in designated areas demand appropriate facilitating action.

Accordingly ACSV believes that the development of an appropriate approach to balance the interests of all lot owners, potentially along the lines of the recent legislation adopted in New South Wales, should be considered. ACSV firmly considers this to be a workshopping topic.

Q. 61. What are your views about:

- *who should set the initial lot liability and entitlement, and any criteria that should be followed*
- *how lot liability and entitlement should be changed, and*
- *any time limits for registering changes to the plans of subdivision with Land Victoria?*

Initial Setting:

ACSV notes that in most instances the current situation in relation to the setting of initial lot entitlements and liabilities is such that the Licensed Surveyor responsible for the plan of subdivision acts in conjunction with the owner/developer and potentially solicitors, agents and owners corporation managers to determine the entitlement and liability allocations. It is our view that Licensed Surveyors recognise their professional obligation to ensure that such entitlements and liabilities are fair and equitable. In relation to larger owners corporation subdivisions the application of value as the principal determinate of entitlement allocation is generally and clearly accepted as the basic guiding principle, but for smaller developments with relatively small variation in value between lots a simplistic equal allocation of entitlement and liability across all lots has quite often been considered more efficient from purchaser perception and management viewpoints. In relation to utilisation of value as the basic guiding principle, surveyors have no option other than to accept sale values provided by the developer or his agent.

ACSV acknowledges that an almost universal adoption of equal entitlement and liability, particularly for smaller developments, has been the norm since the implementation of the Strata Titles Act 1967 being effectively extended to actions under the Subdivision Act 1988. We are aware that other stakeholders may experience significant difficulties in the fair and equitable apportionment of costs, when using liabilities essentially linked to value, in the ongoing management of owners corporation developments.

A number of our members involved in larger apartment developments in particular are well aware that entitlement and liability are distinctly different concepts which should be separately considered and determined. The concept of area and use as guiding principles for determination of liability allocation is commonly adopted in these instances.

ACSV considers the determination of lot entitlement and liability should be a workshopping topic and should also be considered for evolution through education rather than potentially over restrictive legislative change.

We note reference in the Issues Paper to 'an **independent** licensed surveyor' in relation to this topic. We take this to refer to the relative independence of the licensed surveyor in undertaking his professional role, rather than a suggestion that a licensed surveyor other than the one responsible for the plan of subdivision should undertake this role. If the latter is the actual suggestion we believe this to be an ill-conceived, undesirable and operationally difficult concept.

Changes:

ACSV believes that a more manageable process for changes to lot entitlements and liability would be beneficial.

Time Limits:

The current process for changes to an owners corporation plan of subdivision by means of the plan required under Section 32 (generally lodged through SPEAR) is that the changes effected by the Section

32 plan occur at the time of registration of the plan. As the Subdivision Act 1988 provides a 'life span' for any plan under that Act of five years from the date of certification of the plan then we do not believe any alternative should apply for changes effected by such a plan.

*Q. 62 In the absence of a unanimous resolution, what requirements should be met before VCAT can be empowered to change the lot liability and lot entitlement on a plan of subdivision?*

ACSV believes that current fairness and equity tests should remain.

*Q. 63. Are there any other issues relating to part 5 of the Subdivision Act?*

As noted in our response to Q,s.34 and 60, ACSV believes the difficulty in obtaining appropriate resolutions (especially unanimous resolutions) for some dealings/actions in relation to owners corporation subdivisions, such as minor dealings with common property (both for addition to and removal from) is a major hurdle to efficient and desirable outcomes in many cases. We believe that a better balance needs to be struck between the rights of existing individual owners (and mortgagees) and the overall 'common good' within an owners corporation development, potentially through a more flexible definition of unanimous resolution, as exists in some other jurisdictions.

ACSV firmly believes this to be a workshopping topic.

#### *Additional issue*

ACSV notes a rising concern amongst our members in relation to undue pressure from some developers for potentially inappropriate boundary definition, in some cases based on maximising floor areas for sale purposes, which may have adverse impacts from management/ maintenance/update of building structure and complicate the owners corporation management operations in the long term.

#### **Conclusion**

ACSV believes that the combined operation of the Owners Corporation Act 2006, the Subdivision Act 1988 and related Regulations have provided Victorians with a generally effective and efficient titling and management system for many years. We acknowledge that some review is warranted to keep the system dynamic and effective and we believe that the review should incorporate a broad workshop as advocated within this submission.

Yours faithfully,

A handwritten signature in black ink, appearing to be "AB", written in a cursive style.

Andrew Busse  
President