**Reference: PICA Submission Issues Paper 2 Owners Corporations**

The Prudential Investment Company of Australia Pty Ltd. (PICA) is a national property and financial services company, focused on the Property Services industry. PICA was established over 50 years ago with its core industry in Body Corporate Services / Strata Management where it is the market leader.

The PICA group of companies collectively currently manages 170,000 Lots in some 10,500kyl property schemes within Australia. In Australia, the property management part of the PICA group of companies comprises: BCS Strata Management; Raine and Horne Sydney; Clisdells Parramatta; Robinson Strata Management; and, NSW Strata Management. BCS is the PICA Strata Management company represented in Victoria.

**Consultation submission details:**

**The power to commence legal proceedings**

Suggestion to enable court proceeding at any jurisdiction rather than VCAT in the first instance, every instance, without requiring a special resolution.

**Abandoned goods**

One major matter that has arisen in VIC during the discussion on this topic is that we need to distinguish between suspected abandoned vehicles and other goods. Tow truck operators take instructions from ‘authorised’ personnel which are mostly police and council. The idea is being pursued, particularly for Community schemes in NSW, that an OC can enter into a contract with a Local Council to enforce parking restrictions and to tow away abandoned or illegally parked vehicles from common property.

**Common seal**

Electronic seals are should be considered as they are becoming common practice.

**Maintenance plans and maintenance funds**

The sinking fund plan is a ten year plan that projects the amount of funds needed on capital work on the common property of the scheme. Each year a sinking fund levy is imposed on all owners to meet what is projected to be the amounts of monies required for such works. This should apply to all strata managed buildings without exception. This would also assist with the issue of benefits principle.

**Developer’s obligations**

Developers should not own or control a strata management company. If this is not possible then they should be excluded from managing any building in the first five years from its development to ensure the defects are dealt with appropriately. The developer should be excluded from votes relating to building defects.

**Model rules: Pets and smoke drift**

Allow OCs to make rules in relation to nuisance and specifically smoke drift. Smoke drift is an instance of possible nuisance. Of course smoke drift is most often used as a euphemism for tobacco smokers. It needs to be recognised that smoke drift from barbeques can constitute a nuisance as can cooking smells. Perhaps the emphasis should be on the health hazard posed by passive reception of tobacco smoke in the manner addressed in legislation that bans smoking in public areas. Ban smoking in the common areas minimum.

**Availability of OC records**

The issue of being able to inspect the books and records of the OC needs to be tempered with the provisions of the Privacy legislation. The OC collects information about owners for the purposes of sending various notices to owners and being able to properly identify such person at meetings. In NSW, a lot owner cannot simply call the strata manager and ask for a copy of the strata roll but has to attend the strata manager’s offices and personally do an inspection of the books and records for that scheme. A statutory change is applicable to that service. The power of inspection is a power that is open to abuse and many support the view that the details of owners should not be made available to other lot owners and authorised persons as the original purpose for collection of the information is for communication from the OC to the lot owner not for other lot owners to use for other purposes.

No limitations on the right to access all documents held by the OC. Recently the Supreme Court upheld a decision by an OC to place certain legally privileged documents in a separate confidential file that was not open to all owners. One of the owners was a developer wishing to view the reports and legal advice provided to the EC in relation to a defects claim against the builder/developer. There needs to be a right of the OC to refuse inspection of documents that are the subject of a legal matter or potentially a legal matter against a lot owner or lot owner within the scheme. Let the lot owner or owners who are the subject of such a legal matter argue in the Supreme Court for discovery of certain documents.

**Sale of apartment buildings**

Previously all owners had to give consent for a strata to be dissolved and the building sold or ‘renewed’. Must provide for a consultation process to be put in place and the required number of persons to give their consent now being 75% or more of the owners. There are clear instances where the costs associated with repairing and maintaining the existing building are uneconomic in the longer term and such a consideration is one of the criteria to be taken into account.

Propose to align with NSW and have owners entered into a Deed of Agreement to all sell to a single buyer, the sale to occur at the same time. This arrangement allowed the value of the common property to be included in the sale. The average purchase price of the unit was a little over $400,000 – the market price for one of the unit was around $425,000. As a collective sale, the payment to each lot owner was on average $1.3 million.

**Restrictions on powers of an Owners Corporation during initial period.**

There should be something in the act to include a limit on the powers of a developer during the initial 12 months of the OC existing. There are issues surround developers signing the OC into long term contracts leaving the new owners with unnecessarily high fees. An example from the NSW Strata Schemes Act:

**Restrictions on powers of owners corporation during initial period**

***113 Restrictions on powers of owners corporation during initial period***

*(1) An owners corporation must not, during the initial period, do any of the following things unless the owners corporation is authorised to do so by an order of the Tribunal under section 182:*

*(a) alter any common property or erect any structure on the common property otherwise than in accordance with a strata development contract,*

*(b) incur a debt for an amount that exceeds the amount then available for repayment of the debt from its administrative fund or its sinking fund,*

*(c) appoint a strata managing agent or a caretaker or other person to assist it in the management or control of use of the common property, or the maintenance or repair of the common property, for a period extending beyond the holding of the first annual general meeting of the owners corporation,*

*(d) borrow money or give securities.*

*(2) An owners corporation may recover from the original owner:*

*(a) as a debt, any amount for which the owners corporation is liable because of a contravention of subsection (1) (b), together with the expenses of the owners corporation incurred in recovering that amount, and*

*(b) as damages for breach of statutory duty, any loss suffered by the owners corporation as a result of any other contravention of subsection (1).*

*(3) An owner may recover, as damages for breach of statutory duty, any loss that has been suffered by the owner as a result of a contravention of subsection (1) (other than paragraph (b)).*

*(4) It is a defence to an action under this section in debt or for damages if it is proved that the original owner:*

*(a) did not know of the contravention on which the action is based, or*

*(b) was not in a position to influence the conduct of the owners corporation in relation to the contravention, or*

*(c) used due diligence to prevent the contravention.*

*(5) A remedy available under this section does not affect any other remedy.*