ACE
BODY CORPORATE MANAGEMENT
PERSONAL PROFESSIONAL SERVICE

Review of Vic strata laws
Options Paper 1, Nov 2016
Owners Corporations Act 2006

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Julie McLean

National Training Manager

Ace Body Corporate Management

Level 1

222-225 Beach Rd Mordialloc Vic 3195

T: 1300 792 509

E: Julie.m@acebodycorp.com.au

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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.

This submission is in response to the Options Paper resulting from a post implementation review, about 8 years after it was completely changed, and is a full public review.

We support the full Policy Position document from SCA (Vic) on all owners corporation matters. These policy positions proactively inform and assist this review with possible areas of improvement and research to support the suggestions.

This submission should be read in conjunction with the Options Paper, as well as the SCA (Vic) submissions to the first 2 relevant Issues Papers.

Strata community management is now on the world stage, with our nearest neighbours (New Zealand, Singapore, Malaysia) all wanting to export our strata laws and educational standards.

Licensing is not the panacea for protection from risk. We have already seen licensed companies fall to fraud, buildings not maintained and insurance not paid, however the count would be significantly higher if there was no licensing.

Around Australia there is strata reform happening, with each of states and territories watching to see what each jurisdiction does.

We congratulate the government on the Options Paper which is excellent, eminently elegant, succinct, incisive, and well considered.

Julie McLean

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List of consultation questions

Regulation of owners corporation managers

1 What option do you support, and what are the features of that option that make it the most practical and cost effective way of improving the quality and conduct of owners corporation managers?

Option 1A – Introduce a full licensing scheme for professional owners corporation managers.

- A licensing scheme would encourage the right people to the industry who have an aptitude for and commitment to run a business managing owners corporations.
- A licensing scheme ensures the Directors of the management business to have the financial capacity to undertake the relevant training and, therefore, reduce the risk to the consumer.
- A licensing scheme makes the Licensee accountable for their actions (or lack of).
- A licensing scheme would not reduce the pool of owners corporation managers as the Licensee in charge is required to hold the licence not the individual employees of the licensee
- In the interests of the consumer there should be a barrier to entering the industry.
- Business is already investing in training their staff. There are over 200 existing owners corporation managers (employees) who have registered to commence the new delivery of Certificate IV in Strata Community Management [CPP40516] in 2017.

Consider – harmonizing the requirements for Licensing to be the same as NSW. Our consumers own properties in more than one state, Management Companies are across more than one state and staff move around Australia and the world. Rather than create a professional division between states at least agree that same level is required to hold a licence and manage a business.

Option 1B – simply does not increase the protection to the consumer in any meaningful way.

2 What other eligibility criteria should be considered under Option 1A or Option 1B?

- Professional Indemnity needs to include Directors Liability to protect the consumer in the event that the Licensee/Director absconds with the funds.
- Otherwise what is listed is sufficient

3 What other matters are important to consider for the transitional arrangements under Option 1A?

- The transition should recognise both the Certificate IV Property Services [Operations] and the Certificate IV in Strata Community Management [CPP40516].
- Beyond the transition period the only qualification should be Certificate IV in Strata Community Management [CPP40516].
- A Recognition to Prior Learning process is available from RMIT for transition of any other skills or courses.
- Interstate licence holders

4 Which option, and why, would be more effective in ensuring the ongoing knowledge and skill of owners corporation managers?

Option 2B – Deliver an ongoing and targeted information and training program for owners corporation managers in partnership with industry associations.

- More flexible and timely – it will allow "hot" topics such as renewal of strata, developing communities and managing defects to be provided to the sector when it is needed and in demand, rather than delivering less meaningful topics.

- This will fit with the current SCA National CPD Policy (attached).

5 What evidence is there of the benefits of continuing professional development for owners corporation managers, or for property occupations more generally, in Australia or overseas?

- CAV, who was also the driver of National Licensing, is best placed to be able to answer this question.

6 If continuing professional development is preferred, what steps could be taken to ensure the ongoing quality and appropriateness of the training, and to reduce the risk of exploitation by training organisations and participants?

- Option 2B, as the Options Paper argues, reduces this risk; in comparison to Option 2A

7 What other options are there to support the ongoing maintenance of the knowledge and skills of owners corporation managers?

- Mandatory attendance at one CAV or other agency course eg VCAT could run "Mediation skills", Land Vic could run "Lodging documents", CAV "Law Reform"

8 Which option is fairer to both parties and why?

Best option – leave as is or

Option 3A – Prohibit unfair terms in management contracts.

- The management contract is an asset of the strata management business and its tenure is an important part of determining the value of the business. Reducing the value of that contract means the sector will not attract sustainable business to the sector – no certainty, diminishing asset, banks will then not loan to the business.
- Be aware that notice periods need to reflect the notice period for making excessive staff redundant. Often with a large OC, a specialist staff member is engaged to service that OC only (eg a Site Officer for an Estate) and the manager usually takes them on rather than have the OC become an employer. It would be unfair to the management company to be left paying wages for the OC's staff member. 3 months would be an adequate time frame in order to give notice to the redundant staff member.
- In an ideal world assignment of the management contract would be by consent, however apathy is the biggest problem and the time frame around a sale of business, simply is not commercially viable to obtain prior. Rent Roles change hands all the time within the Real Estate industry perhaps the same consultative process could be applied here.

Option 3B would:

- Be too destabilising for the whole sector
- Lead to excessive 'churn' and poor outcomes akin to that experienced in the utilities sector
- Less likely to attract larger sustainable business to the sector – no certainty, staff overheads too high
- Mean that strata managers wouldn't be able to charge appropriately/equitably; because the standard functions of a strata manager are very unevenly spread throughout the year. The effort required is 'lumpy' and only estimable over a period not less than 1yr.

9 Under option 3A, if certain terms are to be prohibited as unfair what types of terms should be prohibited and what types of terms should not be prohibited and why?

Owners Corporation enter into many service contracts for Lifts, Facility Management, Open Space management. Lift contracts are typically 5 to 10 years with a 3 month termination notice requirement and a roll over of the same term. All have commercial outcomes if they OC wishes to terminate early.

- This section should be broadened to include all contracts an Owners Corporation enters into.

An Owners Corporation is an entity that can sue (and it does it regularly) and be sued (happening more)

Proposed unfair term	Comment
provide for a contract duration of more than a set period (for example, three years)	Preferred option -leave as is or split into 2 categories Prescribed – up to 10years Non prescribed – up to 3years
require owners corporations to pass any resolution other than an ordinary resolution for termination	Agreed – the appointment of any service provider is an ordinary resolution anything else is unfair.
require a general meeting to be convened to consider the matter	Disagree – the requirement to give all owners the opportunity to have a say, is not an unfair term. Most meetings are interim as well so a further 28 days for objections (either way). Entering into a contract is a serious business undertaking and lot owners need to be accountable for their actions
provide for excessive notice periods for termination (for example, more than three months' notice)	Agreed - notice periods should not exceed 3 months and should be "both ways" meaning if a manager intends to sack a client that the same notice period is applicable
Provide for excessive early termination fees	Agree - If by "termination fees" the cost to simply bring the contract to an end SCA recommends a fee of $ Disagree - if you mean the balance of the term of the contract converted to a dollar amount – this is normal commercial clause and VCAT has established that only

	the loss of profit can be claimed.
allow managers to renew contracts at their option or that provide for automatic renewal if owners corporations fail to give notice of the intention not to renew, and	The vast majority of OC's have interim meetings because they are satisfied with status quo – of which the manager continuing is just one part. If this was not happening the vast majority would have a manager who is unable to carry out the day to functions because the contract has expired. The minority however when they do want to change are stuck. Automatic renewal is a standard commercial contract term which is found all of the contracts an OC enters into. To fully protect the consumer the limit on roll over should apply to all contracts with OC's. Preferred option - The Contract of Appointment should continue for 1yr, but not later than the date of the next AGM. Failing that, at worst, it should be quarterly
prohibit owners corporations from refusing consent to an assignment of the contract; however, allow terms that provide for the owners corporation's consent but that require consent not to be withheld unreasonably	Agreed – include terms for assignment

10 Should 'reasonable' notice be quantified under Option 3B and, if so, for how long?

Yes. [NB: we do not agree with Option 3B, but if it's chosen, we have answered]

- Because otherwise no one will know what is 'reasonable' notice.
- Term needs to be not less than 3 months to allow for making staff redundant and the Management Company must be able to recover the payments incurred through the redundancy package from the Owners Corporation.

11 What is the best and fairest way to exercise the termination right under Option 3B?

[NB: we do not agree with Option 3B, but if it's chosen, we have answered again it should be applied to OC contracts]

There are 3 examples listed.

The best and fairest is:

- After first year. By ordinary resolution at GM, which the manager is entitled to address

The next, 'least worst' alternative to choose is:

- Any time. But only by special resolution at GM, which the manager is entitled to address

12 Are the disclosure requirements proposed under Option 4A sufficient to address potential conflicts of interest for managers and, if not, what other measures are required?

Yes - but should not list a need for a mandatory number of quotes being required. It is worth reinforcing that this should not be a mandated requirement

Careful definitions of commissions, payments or other benefits received from suppliers and beneficial relationships will be required:

- Companies who receive a fee to suppliers for being on their books
- Companies who receive free education seminars from suppliers
- Company invites to cocktail, dinner and other social events
- Companies who receive a fee from suppliers for each work order sent their way
- Supplier sponsorship to company conferences or industry associations
- Companies with financial interest in other supplier companies

13 Is Option 4B sufficient to address the issues arising from the pooling of funds, or is the extra level of regulation under Option 4C required, and if so, why?

Yes.

Option 4B is sufficient, because the 'light touch' regulation of requiring separate bank accounts is sufficient to address the issues. Single bank account statement are easier for the mum and dad investor to inspect and self-audit.

Also because, in anticipation of the enactment of the 2014 Bill, the majority of strata managers that had pooled bank accounts have already transitioned to individual bank accounts.

The industry is also self-regulating to prevent fraud. Franchise management companies have implemented mandatory "internal control" checklists and SCAV is implementing a similar process over the next 3 -5 years.

14 What are the risks, if any, of unintended consequences arising with the measures proposed in Option 4B or Option 4C?

There are no other unintended consequences for option 4B and as mention above the industry has already transitioned,

For option 4C the unintended consequences are:

- Increased consumer costs with increased auditing regime
- Increased consumer cost to effect the transition from single bank accounts to a Trust Account
- Increased cost to consumer as Trust Accounting education is rolled out (currently Trust Accounting as VET subject is not taught in Victoria. Business systems will need to be adjusted to allow for the extra requirements of money held "in" trust vs "on" trust.
- Will not prevent fraud
- Increase costs to Government

Responsibilities of developers, occupiers and committee members

15 Are the enhanced general obligations under Option 5A sufficient or are the additional obligations under options 5B, 5C and 5D needed, and if so, why?

No option 5A is not sufficient.

Option 5C For all the reasons outlined in the Options Paper.

Important proviso: Option 5C was chosen as a 'package' of 3 changes, even though we strongly disagree with including the one saying that the initial strata manager contract length be limited to a maximum 1yr term. Only include 2 of the 3 expanded obligations [for all the reasons outlined in previous submissions].

Option 5A [light touch] is not sufficient.

Option 5B Medium touch - Any agreement must be fair

Option 5C High touch [& much more detailed]

- Bans developers being strata managers
- Initial strata manager contract length limited to a maximum 1yr term
- Any non-strata manager agreements limited to a maximum 3yr term
- Additional developer obligations listed could apply for both of these options

16 Are the 'further expanded' obligations under options 5B or 5C necessary or should the Queensland or New South Wales approach, as applicable, be adopted without change?

Yes. Adopt all the additional developers obligations listed.

17 Why would the 'building defects' obligation be necessary?

Option 5D.

- Defects are a significant and systemic issue in the strata sector.
- Academic research by UNSW in 2012 [which was for NSW but the Vic anecdotal experience is similar] found that 72% of buildings had defects. For newer buildings built since 2000, it was 85%.
- Costs of rectification fall back onto the OC to pay for them.
- Commercial realities also mean that, many times, defects are not legally pursued for damages and instead OCs pay the rectification costs to fix the defects themselves. The injustice is that owners should not be left with a bill for the mistakes of others.

Option 5D, using the NSW approach, has these features:

- Developer pays a 2% defects bond for surety
- Developer to fund an independent defects [ie building inspection] report [within first 2yrs]
- Developer can't vote on defects

The Options Paper outlines that these specific obligations could either be an alternative, or in addition to the alternative option chosen from 5A/B/C. It should be in addition [not as an alternative].

Duties and rights of owners and occupiers

Stand-alone options

Resolutions and records

Option 6A - records

- Agree to the proposed measures to clarify the right to inspect owners corporation records and align the basis for invalidating resolutions and rules.
- Consider adding the obligation of the lot owner who accesses the records to use and protect the information as well. We have very few requests for records but the last were based on a vendetta between owners who took selective information and accused other owners (falsely) on Facebook.

Option 6B – access to common property

- Give owners corporations access to private lots to repair common property.

Option 6C – Alterations and repairs to common property

- Prohibit lot owners from making alterations or repairs to common property.

Option 6D – Rule-making powers and Model Rules

- Expand rule-making power to enable rules to be made, for pets, smoke drift, renovations and access to common property.

Option 6E – Make Model Rules for smoke drift, renovations and access to common property.

18 If it is desirable to expand the rule-making power to include rules on smoke drift, renovations and access to common property:

(a) should Model Rules also be made on those subjects - Yes

(b) are the proposed Model Rules based on reasonable presumptions about what most lot owners in owners corporation would regard as unobjectionable, and are they adequate - Yes, and Yes [ie they are unobjectionable and adequate].

Option 6D – important proviso [pets]

- Stand-alone Option 6D was chosen as a ‘package’ of changes, even though we strongly disagree with a change that would enable rules to prohibit pets.

Option 6E – important proviso [pets]

- Stand-alone Option 6E is saying that the Model Rule on pets is to be removed.
- Given the inconclusive nature of the feedback, as noted in the Options Paper, it is appropriate that, instead of any change, the appropriate response is no change. Ie Status Quo [the Model Rule on pets remains, unchanged].
- Given the change to remove the pets Model Rule would be a terrible outcome, if change is intended to be chosen, then we would be open to anything [eg NSW approach of 3 alternative Model Rules].

Brief general comment regarding pets

The freedom to keep a companion animal is central to many people’s lives and well being, and the inability to keep a pet is a source of significant distress and subsequent litigation in strata schemes. If we are committed to the values of liberal democracy we must concede that our own view of pets is irrelevant to the question of whether someone else is allowed to keep one. What others do in their own

home is their business. The only way that it will become our business is if what they do disturbs us. Strata title runs the very real risk of fostering intolerance if rules are allowed that implement blanket restrictions on pets or pet restrictions based on size or weight.

Renovations to lots

Regarding renovations, it is proposed to expand the rule making power to enable a rule for renovations; and to make a Model Rule for renovations.

The Options Paper lists 3 possible alternatives for the form of such a Model Rule.

- We support the third alternative listed. Ie Develop a Model Rule that prohibits any change without the OC's approval, which must not be unreasonably withheld.
- The Rule should include the lot owner pays for any costs incurred by the OC as a result of the renovation (failure to protect the fire system resulting in ire Brigade turn out (very common), isolation the common cold water or electricity supply causing hot water, pumps etc to shut down.

Option 6F – Develop a Model Rule for fire safety advice to tenants and provide for owners corporations rules to be part of tenancy agreements.

- Owners & Landlords should be required to affix evacuation advice to the back of the front door.

19 Would a Model Rule on fire-safety advice to tenants, in principle, be unobjectionable, and if so, why?

Yes.

Because it would not be burdensome; and it would be in everyone's interest [both landlord and tenants].

20 Do all or only some of the options improve the position of owners corporations and why?

- All options improve the risk position of OCs.
- All options support lifestyle choices
- All options are reasonable and not restrictive

21 What additional justification, if any, is needed for the proposal for the joint and several liability of lot owners for breaches of owners corporation rules by their tenants and invitees?

- No additional justification is necessary.
- Other lot owners should not be left with the burden or cost of managing a tenant for another lot owner especially when that lot owner is receiving a financial benefit.

22 Is it sufficient simply to expand on the existing duties of committee members to address the issue raised, or is a complete reformulation of committee members' duties, along the line of the Associations Incorporation Reform Act, necessary, and if so, why?

- Yes, it is sufficient to simply expand [Option 7A], with just one addition necessary. That committee members must disclose pecuniary interests [eg in nomination form, and in the minutes]; and they can't vote on those matters where they have a pecuniary interest.
- Reformulating [Option 7B] is unnecessary [even though it also would be fine and is 'not bad'].

23 What risks or unintended consequences might arise with options 8A, 8B and 8C, which propose extending the powers of owners corporations to deal with community building, water rights and abandoned goods?

Option 8A -

- Some risks or unintended consequences are possible, but the benefits [upside] far outweigh the costs [downside].
- The risks are higher by allowing the OC to further separate it's purpose from its members as the reasons for wanting to live or work in a strata conflict. We will not be able to get volunteers for committee positions if we don't start aligning the "lifestyle" & "community" into the obligations. People largely buy into an OC – safety, lifestyle, investment and community – the purpose of an OC needs to reflect this.
- Public libraries are an analogous example. Citizens already have to pay for things they may not use, but are inherently good societal public services.

Option 8B – Permit owners corporations to deal with water

24 What is the best approach for dealing with abandoned goods on common property, and why?

There are 2 approaches listed.

The best approach is the traders one [under the ACL], rather than the landlords one [under residential tenancies].

The traders approach [under the ACL] is the best approach because, comparatively, it is less restrictive/onerous and is more practical].

25 What are the benefits and risks of the additional power proposed for goods that block access?

Some risks or unintended consequences are possible, but the benefits [upside] far outweigh the costs [downside].

Public libraries are an analogous example. Citizens already have to pay for things they may not use, but are inherently good societal public services.

Decision-making within owners corporations

26 How might the limitations on proxy farming have negative consequences for the governance of inactive owners corporations?

Stand-alone Option 9A – important proviso [proxy farming]

Proxy farming is not a significant issue in Victoria. There is no problem to solve. Restricting it would be a solution in search of a problem – in terms of unintended consequences

- Stand-alone Option 9A was chosen as a 'package' of changes, even though we strongly disagree with the change to restrict proxy farming.
- Restricting proxy farming would be counterproductive, despite its pure intentions.
- In terms of what the negative consequences may be from limiting proxy farming, the risk outlined in the Options Paper is that it would reduce the capacity to get resolutions passed.
- Another is the perverse outcome that 'upstanding' owners of multiple lots should not be restricted in this way.

- Worse still, perversely, is that those that want to game the system will continue to do so, if proxy 'farming' is restricted. Instead, it would see the rise of the similarly natured proxy 'crop-sharing' – where the proxies are redistributed among their hand-picked crony committee members.

27 Which approach to giving owners corporation managers decision-making powers in Option 9B is the more effective and why?

Option 9B – 2. For all the reasons as noted in the Options Paper.

- The Options Paper says a meeting cannot proceed if no lot owner is present in person or by proxy. Note that when drafting this consequent change, consider that it should say it is if there is 'no or only 1 lot owner'. This is because a valid meeting actually requires 2 people. A person can't have a meeting by themselves.
- Directed proxies: where a directed proxy directs the re-appointment of a strata manager, strata managers should be able to use the proxy [currently it's not allowed]. This is as opposed to undirected proxies.

28 What are the risks of giving owners corporation managers decision-making powers in the absence of a licensing or enhanced registration scheme for managers?

This is somewhat of a moot point.

Practically, it's already happening because OCs have to function somehow.

29 Is further relaxation of the special resolution process required for inactive owners corporations and, if so, which alternative under Option 9C is preferable and why?

No. STATUS QUO – No change.

The option does not make sense.

Also, do not introduce new, additional, types of resolutions.

The status quo with respect to special resolutions is appropriate because it provides a safeguard of notifying people [as part of an in interim special resolution process], and because special resolutions by their nature are a material decision.

30 How might reducing the size of an owners corporation committee and providing for who can arrange a ballot improve its functioning?

Committee size:

Limit up to 7 with:

- Ability to increase to 12 by resolution
- Include in Model Rules the ability to appoint sub-committees

- Providing for who can arrange a committee ballot will help improve its functioning, because it provides greater clarity.

- Note for example, similarly to the comparison, that Option 10B will also need to clarify the strata manager can arrange a committee ballot.

Dispute resolution and legal proceedings

31 How well do options 11A and 11B address the issues raised about the role of owners corporations in dispute resolution and the procedures under Model Rule 6?

Very well. It will be a big improvement

32 What are the benefits and risks of increasing the amount of the civil penalties for breaches of the rules?

Option 12A.

- It will provide greater clarity for those self-managed OC's
- In terms of the benefits and risks, these are as per the Options Paper, and SCAV previous submissions

33 Which option for reforming the imposition and payment of civil penalties achieves the best balance between fairness and effectiveness, and why?

Option 12D – Allow owners corporations to impose penalties but retain the requirement to pay civil penalties to the Victorian Property Fund.

- This supports the further option to provide the strata sector access to the Victoria Property Fund for sector training and advancement.
- The next best alternative, if Option 12D is not chosen, would be Option 12C.
- The options have these salient features regarding the payment of civil penalties:

Option	Imposed by	Retained by
Current law	VCAT	VPF
Option 12B	OC	OC
Option 12C [NSW approach]	VCAT	OC
Option 12D	OC	VPF

34 Which option, and why, best balances the need for owners corporations to be able to commence legal actions with protection for those lot owners opposed to an action?

Option 13C. For all the reasons outlined in the Options Paper.

This is the most finely tuned option [and without having to introduce a fourth voting threshold that would be a new, additional, type of resolution].

Important proviso:

- Defects cases involve significant dollar amounts and need to be excluded from the proposed upper dollar limit [above which would still require a special resolution], in the same way that it is proposed to keep the current exemption for recovering debts from lot owners.

Failing this change to Option 13C, then we would choose Option 13A.

35 If Option 13A was adopted, would the current provision of the Owners Corporations Act that empowers VCAT to authorise a lot owner to commence proceedings on behalf of an owners corporation still be necessary?

NO – by lowering the threshold to an ordinary resolution will mean that an OC should able to reach a majority agreement to take legal action.

However in our experience around a lot owner taking a matter to VCAT has been because the OC can't get the special or unanimous resolution – especially large OC's eg:

- 754 lot development used a lot owner to create a dispute in order to change the Rules.
- 100 lot development used a lot owner to create a dispute in order to change lot liability.
- 100 lot development used a lot owner to create a dispute in order to sue the builder. Even at an ordinary resolution, the decision will be interim.

36 If Option 13B was considered appropriate but the 66 per cent threshold was considered insufficient to overcome the problems identified, would a further reduction to 60 per cent be appropriate?

Rather create another tier/type resolution I would suggest adjusting the threshold for a quorum:

- lowering the thresh hold of Special Resolution (as is the case in NSW & Qld) from 50% to 25% for items such as:
    - Amend, revoke or create Rules
    - To Provide a service to lot owners or occupiers
    - To enter into service agreements for the provision of services to lot owners or occupiers
    - To lease or license whole or part of the common property
    - To lease or licence any other land on or off the Plan
    - To bring legal proceedings (except for fee recovery or enforcing the Rules)
    - To pay for non approved works (not specified in the maintenance plan) from the maintenance fund.
    - To undertake works to the common property that is twice the annual fees or require a planning permit (except if already specified in the maintenance plan
    - To borrow an amount of money greater than the annual budget

- Remove the "interim" provision for the following special resolutions (meaning 75% of owners must vote in favour)
    - To raise a special levy for extraordinary items of expenditure if the amount is more than is twice the annual budget (except for repairs and maintenance for safety, prevent loss or further damage)
    - To make significant alterations to the USE or APPEARANCE of the common property (except for safety reasons)

Differential regulation of different sized owners corporations

37 Which option, and why, represents the most appropriate way to differentiate the level of regulation of owners corporations according to their size?

Option 14B. For all the reasons outlined in the Options Paper.

38 Is the size of owners corporations in each tier appropriate for the requirements imposed on them and, if not, what should be the size requirement for each tier?

Broadly, Yes.

Whilst it is not exactly as we have recommended in previous submissions, the tiers are a big improvement and more appropriate than the current laws.

Building insurance - collectively

A change is desperately needed to the proposed 4 Tiers.

The proposal is that Tiers 1 & 2 have mandatory *collective* building insurance & public liability insurance.

But the proposal is that Tier 3 OCs are not required to have *collective* building insurance [still required to have mandatory public liability insurance]. So, building insurance will still be required for Tier 3 OCs, but instead of OCs having to collectively insure the building, lot owners will be able to individually insure their own lot and their liability for the common property [if collective insurance by the OC is unable to be achieved].

This would be a retrograde step.

We recommend requiring *collective* building insurance for Tier 3.

Given the importance of this issue, **Attachment A** reproduces our response to the Issues Paper on why collective insurance is important and should not have an 'opt-out'.

This is also hard to reconcile because, in the specific section of the Options Paper on Insurance, it says:

"There was little support for allowing lot owners to opt out of mandatory OC insurance and take out their own policies as it would be impossible to monitor whether those policies were actually taken out (and renewed) or were adequate."

Audit requirements

Table 1 has proposed audit requirements that are recommended to be changed, because a mandatory audit/review would be cost prohibitive for smaller OCs. Refinements as follows:

	Options Paper proposal	**Our recommendations**
Tier 1	Mandatory independent audit	Mandatory independent audit
Tier 2	Mandatory independent review	Need an AGM decision *NOT* to have an audit [else audit is required]
Tier 3	No audit or review	Need an AGM decision *WHETHER OR NOT* to have an audit

Inactive

In this section, the Options Paper says that many Tier 3 OCs would be inactive. As the Option Paper notes, fees would have to be collected [eg for public liability insurance] so they cannot be inactive.

Table 1

Note, remember that the Vic OC average lot size is about the level of where Tier 2 & Tier 3 sizes meet.

Finances, insurance and maintenance

39 What other options could be considered to enable owners corporations to recover debts?

That an OC must pursue fee recovery within a maximum period of 2yrs [as per Qld laws]. This will ensure that all lot owners contribute in the same way (eventually)

40 Should the amount of any fee bond be left to owners corporations to set and, if so why?

Status Quo – No change.

We are strongly opposed to introducing the concept of fee bonds. Although it probably has the purest of intentions, do not adopt this 'novel' strata concept at all. This is because it will have significant administrative costs, will actually be counterproductive to achieving sound management of OCs, and would not be conducive to proper budgeting for OCs.

The introduction of Bonds brings with it even more compliance requirements and additional administrative cost to the OC, on how the funds are managed and held, unless you are proposing to set up a Bond Board to administer?

If it's chosen to adopt Option 15A regardless of our opposition, then in answer to this question -

Yes, leave it to the OC to set the amount of the fee bond.

41 Should a maximum amount be set out in the Act and, if so, what should that amount be?

Yes. As a safeguard but as a % of the budget or The maximum amount should be fees of one year [and the bond to be maintained at that level, in the event of any draw-down].

42 Would it be more efficient if fee bonds were held by the owners corporation itself, the owners corporation manager or the RTBA?

If the management company is licensed then the OC could administer with increased costs OR

If not licensed then RTBA.

43 Should owners corporations be able to recover costs that exceed the debt or should they be capped at level of the debt?

On balance, OCs should be able to recover costs that exceed the debt.

[They should not be capped at the level of the debt].

Payment plan in 'hardship' cases

There is no question specifically about this, so we make comment about it here.

Status Quo – no change.

OCs can and already do this as needed, with committee approval. Change is not necessary.

Option 15B as it is presented permits OCs to have the power to make a rule. So, given a special resolution is required to make a rule, this is proposing an even higher threshold than currently required.

If it's wanted to specifically address what is possible but currently silent, then it would be best not to make payment plans in 'hardship' cases too difficult to adopt. So instead, make it more similar to the current situation, where the default would be that there's a basic right by either an addition to the Act, or developing a Model Rule. In these cases then, only an ordinary resolution would be required to adopt a payment plan in 'hardship' cases.

44 Which of the 'litigation costs' options better achieves a balance between financial equity for lot owners, encouraging alternative dispute resolution and discouraging unnecessary use of lawyers?

Option 15F.

The options have these salient features regarding litigation costs:

Option 15E	Successful party entitled to costs on applicable statutory costs scale. Would still be a shortfall between costs awarded and actual costs incurred.
Option 15F	Successful party entitled to all their reasonable litigation costs.

If Option 15F is *not* chosen, then it should be mandated that VCAT should be the *sole* jurisdiction ie cannot be the Magistrates Court.

45 What would be the cost of increasing the minimum public liability insurance amount to $20, $30 and $50 million?

The Options Paper notes the premium increase in going from $10m to $20m of cover is 'substantial'.

This is incorrect.

The reality is that the premium increase in going from $10m to $20m of cover is 'miniscule'. The premium increase in going from $10m to $50m of cover the increase would be less than $100 per OC. Dividing this by the number of lot owners in the OC, means it's less than $10 per lot owner per year.

It also should be noted that the amount insured for is function of the type and size of scheme and perhaps the amount should match the scheme tier propose elsewhere.

Note: The types of mandatory polices has not be discussed but we would like to suggest that two more polices become mandatory:

- Fidelity – in the absence of any other consumer protection, this is a standard policy offer by insurers for an owners corporation to protect their funds from embezzlement. The base amount offered is usually $100,000.
- Office Bearers – this policy help protect the volunteers who don't really know how to act in good faith, but try and get it wrong.
- Legal Defence – this policy assists the OC by providing funds to defend a action

46 How might the equity achieved by the powers proposed under Option 16B outweigh the potential problems?

Option 16B [substantial change] is chosen over Option 16A [minimal change].

The equity achieved by Option 16B outweighs the potential problems because this 'more finely tuned' option provides *significantly* more equity, than the potential downside of a small increase in disputes about its application.

47 In relation to the proposal under Option 16B for differential levies for insurance policy premiums (where a particular use of a lot increases the risk) should owners corporations be:

(a) required to apply to VCAT for the appropriate order, or

(b) permitted under the Act to apply the appropriate levy as of right, leaving it to an aggrieved lot owner to apply to VCAT for any remedial order?

(b) This is the most appropriate option.

48 Which option or options do you prefer for maintenance plans and funds, and how does the option or options address the issue?

Both of the stand-alone options [17A, 17B]. For all of the reasons outlined in the Options Paper.

49 Should a general obligation be imposed to deposit in a fund the amount necessary to implement the relevant plan, leaving it to individual owners corporations to resolve on the appropriate part of annual fees or should some fixed proportion of fees be set in the Owners Corporations Act?

Maintenance plan/fund

The fund amount should be a general obligation [not some fixed proportion of fees].

This is because the appropriate fund level is dependent on what the maintenance plan forecasts is necessary. It is not related to the level of annual fees.

Contingency plan/fund

The fund amount should be a fixed proportion of fees set out in the OC Act [not a general obligation]. This is because of its unplanned nature.

Capital Works Fund, Sustainability Fund

Consider the ability to allow OC's to create other funds

50 If a general obligation, should the resolution as to the amount to be set aside be an ordinary or special resolution and should it also be stipulated in the Act that the designated part of the fees must be adequate to fund the plan?

The resolution as to the amount should be an ordinary resolution [not a special resolution].

Yes, it should be stipulated in the Act that the designated part of the fees must be adequate to fund the plan.

51 If a fixed proportion of fees, what should that be for both types of fund?

Contingency plan/fund – fixed proportion of fees

It is recommended that the OC Act be changed to require owners corporations to establish and pay a contingency fund fee as a mandatory component within the annual budget.

Also that the owners corporation establish and document the rationale for the formula used to establish the level of the contingency fund and that this rationale be considered at the annual general meeting.

Not with standing this process, the contingency fund established:

- Should not be less than 15% of the value of the other components of the annual budget, but may exceed this amount if required.
- An owners corporation could vote to vary the levy downwards once the accumulated balance in the contingency account had reached 150% of the total annual fees of the owners corporation

52 Where an owners corporation needs to make an assessment of how much of its general repair and maintenance costs arise from a particular use of a lot, what criteria or principles should it apply in making the assessment?

Option 18 – Allow owners corporations to recover costs arising from particular uses of lots

Similarly to the benefit principle law changes [he who benefits more, pays more]. This recognises that the assessment of the benefit principle is not a science. The assessment of relative apportionment of benefit and contribution is, of necessity, a matter of judgement, not science. There will be a range within which it would be reasonable.

Here, similarly to that for the benefit principle, it should not be a precise formula but rather an assessment. Appropriately, the application is then limited in nature. Specific criteria would not actually assist, but as an unintended consequence may confuse the situation.

Part 5 of the Subdivision Act

53 What, if any, risks arise from removing the requirement for owners corporations to have and use a common seal?

Option 19 – Remove the requirement for an owners corporation to have a common seal.

None. Stand-alone Option 19 is chosen and is appropriate.

The Options Paper proposes the general situation is to be that, if authorised by the OC, 2 committee members would be able to sign for the OC. This is as opposed to the current law which says it can be any 2 lot owners. It is presumed this is intentional – as a safeguard. But if so, along with other necessary exceptions as per current laws, many OCS are not required to have a committee [whether under current laws or the option proposed] so it will need an exception for this necessary distinction.

54 How much should developers' property rights regarding initial settings of lot liability and entitlement give way to considerations of fairness?

Option 20D – Set lot liability and entitlement according to specified criteria.

Option 20E – Improve the current provisions for changes to lot liability

As the Options Paper notes, the current unfettered property rights of developers is outweighed by the degree of public interest and underpinning of confidence necessary for the significant strata property sector.

55 If developers' rights should give way to fairness, which of options 20C to 20E for the initial setting of lot liability and entitlement best ensures fairness, and why?

In terms of how much [ie quantum] change is appropriate, we have chosen Option 20D [most change].

If Option 20D is not chosen, the next best alternative is the 'simple principles' of Option 20B [relatively small change or, in the words of the Options Paper: 'relatively simple and logical']

Some salient features of the alternative options are:

Option 20A		After 5-10yrs it's reassessed unless there's a unanimous resolution to affirm the settings
Option 20B	Simple principles	Relatively simple Principles broad, wide discretion
Option 20C	More detailed principles	Qld model
Option 20D	Specified criteria	Minimises discretion, maximises guidance

Note, do not choose the Qld model of Option 20B. Qld, with respect, is not a model to follow for this issue. They have back flipped many times over the last decade or so, from one model, back to the other, and caused havoc in the strata sector.

56 Under what circumstances could options 20B to 20D be implemented by the developer rather than a licensed surveyor (which would be cheaper and quicker)?

It is preferred that it be a licensed surveyor.

However, we understand the thrust of the question – could these options be adopted, except still done by the developer.

Possibly, consider attaching significant compensation from developers that do the wrong thing.

This is what NSW have just done with a separate issue. The new NSW strata law says a developer is liable if they don't set realistic budgets. It provides for compensation from developers who lure unwary buyers with unsustainably low levies. Developers promise fantastically low levies which are a fantasy and deliberately mislead purchasers over the real level of fees.

57 To what extent should the surveyor (or developer) be required to set out how the criteria were applied in achieving the settings?

Should be required to set out which specified criteria were applied and the basis for the settings.

58 Under Option 20E, is 30 days a reasonable time for an owners corporation to notify Land Victoria of changes to lot liability and entitlement?

Yes.

59 How might the proposal to reform the process for VCAT applications be sufficient to balance the rights of the majority of lot owners against those of a holder of the majority lot entitlement?

Stand-alone Option 20E provides an exception for when one lot owner owns ≥ half of total lot entitlements.

The proposal sufficiently balances these rights.

Especially given that this is just to pass the threshold for being able to hear a matter. VCAT would consider all relevant case specifics in actually determining the matter.

60 Which option, and why, is the best and fairest way to provide for a more flexible process to sell buildings governed by owners corporations?

Option 21A – Reduce the threshold to 75 per cent for all owners corporations - New South Wales model.

Option 21A is the best and also to harmonise laws.

There's already too much divergence in state and territory strata laws. Jurisdictions should harmonise strata laws wherever possible. Considering the issue of termination is a brand new consideration for Vic, harmonise on this common approach.

Given termination is a significant issue, there is one change recommended to Option 21A, also bearing in mind the relativities of the sorts of other decisions that require a unanimous resolution or a special resolution. So, for termination, the one change recommended is NOT to provide for an interim special resolution. That is, just for termination, it has to be a 'normal' special resolution.

The salient features of the options are:

Option 21A	75% - NSW model	Mandatory VCAT supervision
Option 21B	75% - Less restrictive model	Only 1 special resolution Non-mandatory VCAT supervision [burden of proof on those wanting to demolish]
Option 21C	Tiered by age – NT 4 tiered model	More conservative thresholds Non-mandatory VCAT supervision [burden of proof on dissenting lot owner]
Option 21D	Tiered by age – simpler 3 tiered model	Reduced thresholds c/w Option 21C Mix of mandatory [Tier 1] & non-mandatory [Tier 2] VCAT supervision
Option 21E	75% - but only for commercial	

A safeguard such as mandatory VCAT supervision is appropriate.

Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots].

The more conservative thresholds of Option 21C are still too conservative ie they are still too high.

To only deal with commercial buildings, as per Option 21E, is inadequate. Wholly commercial OCs are a miniscule portion of the building stock.

61 Under Option 21D, which voting thresholds and VCAT processes are preferable, and why?

The voting thresholds listed in Option 21D are preferable and the most appropriate.

In terms of the VCAT processes, the decision should be the same as current laws. Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots].

Make both Tier 1 and Tier 2 to be mandatory VCAT supervision [with burden of proof on dissenting lot owner(s)].

62 Under Option 21E, which sub-alternative is preferable, and why?

Option 21E-1.

For the same reasons as why Option 21A is better than Option 21B.

That is:

- Mandatory VCAT supervision is appropriate
- Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots]

63 If the 'less restrictive' sub-alternative, should the special resolution be 75 per cent of lot entitlement only and should the burden of proof be on the applicant rather than the respondents?

Yes, it should be 75% lot entitlement only. Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots].

Yes, the burden of proof should be on the applicant [ie dissenting lot owner], not on the respondent [ie those wanting to demolish]. This is counterbalanced by reversing the non-mandatory VCAT supervision, to instead be mandatory VCAT supervision.

64 To what extent do the options to reform the Subdivision Act in improve decision-making processes within owners corporations?

All the options are an improvement on the current laws; and are balanced with safeguards.

For the reasons we have provided in these questions, in terms of ranking our preferences:

Option 21A is our first chosen preference.

Option 21D is our second chosen preference.

The last, or fifth chosen preference, is Option 21E.

Retirement villages with owners corporations

65 Which option, and why, better achieves the aim of ensuring that the operation of owners corporations in retirement villages conforms with both the Owners Corporations Act and the Retirement Villages Act?

Option 22B. For all the reasons outlined in the Options Paper.

It is as proposed in the 2014 Bill, which we supported.

The convenience of combined AGMs is outweighed by the confusion caused and the differing processes and voting entitlements of the two Acts. [They can still be held consecutively, so the proposed change is not too onerous].

66 If Option 22A, which sub-alternative, and why, better resolves the problems involved in the combining of annual meetings for owners corporations and retirement villages?

It is not our chosen option, but if Option 22A, then the best sub-alternative listed is:

The second one [ie operator decides whether to hold joint/separate meetings].

Do not choose the first one [ie different voting entitlements for resolutions under each Act]. Perversely, this one may add *more* confusion than currently exists.