



CONSUMER PROPERTY LAW REVIEW

OPTIONS FOR REFORM OF THE OWNERS CORPORATION ACT 2006

The Australian Institute of Conveyancers (Vic Div) has studied the Options and now make the following comments :

1.REGULATION OF OWNERS CORPORATION MANAGERS

1.1 Licensing versus registration of owners corporation managers

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

Answer: Option 1A is preferred, i.e. introduce a full licensing scheme for owners corporation managers.

Benefits:

- Appropriate training requirement drawn from relevant national training package
- They would need to hold professional indemnity insurance at all times
- Expansion of ineligibility criteria
- At least one Director needs to be licensed and other Directors would need to meet licensing eligibility criteria
- Despite the low number of owners corporation members, some of the current managers handle very large sums of money and run multi-storey dwellings requiring a high level of expertise
- A licensing scheme would ensure a level of professionalism lacking with some managers

Disadvantages:

- Cost to government. If there continues to be minimal regulation there is a greater risk of problems arising later, both financially and administratively, which could cost government a lot more to fix.
- Costs to industry – bearing in mind the amount of money owners corporation managers control, the cost would be negligible
- Costs to owners corporations – again, the cost if something goes wrong would be even greater.

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

Answer: The proposed extension of eligibility criteria to include serious criminal and sexual offences is preferable.

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

Answer: No further comment.

1.2 Maintaining the knowledge and skills of owners corporation managers

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

Answer: Option 2A – Mandate continuing professional development for owners corporation managers as a condition of being licensed or registered.

AICVic believe that owners corporation managers should complete an annual program of Continuing Professional Development (CPD) in order to renew their licence. Note that it is a requirement in NSW. Note also that the only current information services available for owners corporation managers to maintain their knowledge and skills is voluntary. Inevitably (as happens with the Conveyancing industry where CPD is not compulsory) this will result in only a proportion of managers completing CPD, i.e. the more professional ones. The NSW regime is a sensible way. We do not agree that compulsory CPD is a barrier to entry. If an aspiring owners corporation manager is put off by a licensing regime which includes compulsory CPD, then they are not the sort of professionals that should be managing the finances and lifestyles of owners corporations.

More importantly, it would reduce the risk to the consumer.

Question 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?

The fact that there is no empirical evidence of the benefits of CPD is no reason to believe it is not valid.

AICVic has always required members to complete a standard of CPD since incorporation with the result that those who have complied with the requirement are better trained and educated in changes to legislation and procedures, resulting in a more professional conveyancer. This has also meant less impact on the master policy. CPD is mandatory for lawyers and other professionals as an important consumer protection initiative and it is essential that CPD is applied to owners corporation managers as professionals.

Question 6 – If CPD 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.

The peak body for owners corporation managers would be best placed to draw up minimum standards.

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

No comment.

1.3 Unfair terms and termination of management contracts.

Question 8 – Which option is fairer to both parties and why?

Answer: Option 3A is preferred for the reasons set out in the Options Paper.

Question 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?

Answer: Terms longer than 3 years, automatic renewal, should be prohibited. There is a distinct lack of transparency.

Question 10 – Should ‘reasonable’ notice be quantified under Option 3B and, if so, for how long?

No comment.

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

No comment.

1.4 Duties and obligations of owners corporation managers

Stand-alone option for conflict of interest

Question 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?

Answer: Yes, agreed that the suggested disclosure requirements in Option 4A are reasonable and appropriate.

Question 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?

Answer: Option 4B is sufficient to address issues arising from pooling of funds.

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

Answer: There are extra costs and administrative burden on industry and government.

2. RESPONSIBILITIES OF DEVELOPERS, OCCUPIERS AND COMMITTEE MEMBERS.

Question 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?

Answer : Prefer Option 5C for reasons outlined in Options Paper.

Question 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?

Answer: Yes – all additional developers’ obligations required in Queensland and N.S.W. should be implemented.

Question 17 – Why would the ‘building defects’ obligation be necessary?

Answer: Consistency with N.S.W. to overcome problems with developers not meeting these standards.

Question 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, and if so**
- (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?**

Answer: Agree to all Stand-alone options and also to (a) and (b) above. The question of the keeping of pets is problematic. So long as the pets do not disturb neighbours, then there should be no prohibition. Smoke drift is entirely unacceptable and could be medically dangerous to the recipients.

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

Answer: Yes - it is a simple matter of tenants being forewarned and would be in everyone’s interests.

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

Answer: Agreed that all options improve the situation of owners corporations.

Question 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?

Answer: No further justification required.

Question 22 - Is it 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?

Answer: It is sufficient to expand the existing duties of committee members backed by guidance materials and voluntary training.

Question 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?

Answer: There may be some unintended risks with respect to community building and abandoned goods. However, handling water rights is a particular complicated area and the committee should always seek appropriate advice before dealing with those rights.

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

Answer: Agree with Option 8C .

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

Answer: Appears a fairer method

3. DECISION-MAKING WITHIN OWNERS CORPORATIONS

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

Answer: Nothing beneficial will be achieved – more disfunction.

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

Answer: Option 9B-2 is preferred for the reasons outlined in the Options Paper.

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Question 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?

Answer: Lack of a regulated industry can result in poor quality and uninformed decisions being made and lack of transparency.

Question 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?

Answer: No change required. Current legislation contains sufficient safeguards.

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

Answer: 12 committee members is unwieldy and unnecessary. Stipulating who can arrange a ballot would provide greater clarity.

4. DISPUTE RESOLUTION AND LEGAL PROCEEDINGS.

Question 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?

Answer: The Options suggested appear to be a sensible change.

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

Answer: We do not have first hand knowledge of issues but agree that the maximum civil penalty should be increased to \$1,100 for the first breach and \$2,200 for each subsequent breach. \$250 is laughable.

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

Answer: Option 12C – the NSW approach – appears to be more balanced.

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

Answer: Option 13C appears to be fairer with a stepped approach.

Question 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 comment.

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Question 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?

Answer: Our view is that Option 13C is more appropriate.

5. DIFFERENTIAL REGULATION OF DIFFERENT-SIZED OWNERS CORPORATIONS

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

Answer: Prefer Option 14B – the treatment of two lot subdivisions and ‘services only’ owners corporations if fairer.

Question 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?

Answer: The size of the proposed tiers is agreed. However, collective building insurance should be mandatory for all Tier 3 owners corporations, except for two-lot subdivisions and ‘services only’ subdivisions.

6. FINANCES, INSURANCE AND MAINTENANCE

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

Answer: Option 15C – permit owners corporations to recover pre-litigation debt collection costs from a lot owner – up to a reasonable amount and with a time limit.

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

Answer: Bonds would be too convoluted and there would be a public backlash.

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

Answer: Bonds not recommended.

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

Answer: No further comment.

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

No comment.

Question 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?

No comment.

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

Answer: Not sure of the cost but we understand from Strata Community Australia that the cost is minimal.

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

Answer: No comment.

Question 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 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?

Answer: We consider (b) would be simpler and quicker.

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

Answer: Prefer Options 17A and 17B for the reasons outlined in the Options Paper.

Question 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 Corporation Act?

Answer: A general obligation is preferred, not fixed, as every owners corporation has different requirements.

Question 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?

Answer: If a general obligation is chosen, then it should also be stipulated that the fee must be adequate to fund the plan.

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

No comment.

Question 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?

Answer: Leave it to industry representatives to determine.

PART 5 OF THE SUBDIVISION ACT

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

Answer: None that are obvious, so long as documents are signed correctly. Common seals are outdated.

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

Answer: We believe that the current situation where developers decide lot liability and lot entitlement is problematic.

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

Answer: Option 20D is recommended in the first instance but if that is not the ultimate decision, then ‘simple principles’ is preferred.

Question 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)?

Answer: Prefer a licensed surveyor as an independent expert.

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

Answer: The surveyor or developer should be required to set out the specific criteria applied.

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

Answer: Yes

Question 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?

Answer: This proposal appears fairer to the lot owners.

Question 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?

No comment

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

No comment

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

No comment

Question 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?

No comment

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

Answer: Option 21A is preferred.

8 RETIREMENT VILLAGES WITH OWNERS CORPORATIONS

Question 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?

Answer: Option 22B – for the reasons set out in the Options Paper.

Question 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?

No comment

Jill Ludwell
Chief Executive Officer
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