Consumer Property Acts Review Options Paper No. 1

Options for reform of the *Owners Corporations Act 2006*

To: **Consumer Property Acts Review, Policy and Legislation Branch, Consumer Affairs Victoria**

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Introduction

In August 2016, the then Minister for Consumer Affairs, Gaming and Liquor Regulation, the Honourable Jane Garrett MP, announced a general review of Victoria's real estate and related legislation. The review examines four key pieces of real estate and property legislation: the *Sale of Land Act 1962* (Vic) (the Act), the *Estate Agents Act 1980* (Vic), the *Owners Corporations Act 2006* (Vic) (the Act) and the *Conveyancers Act 2006* (Vic). The objectives of the review are to:

- assess the four Acts to identify improvements that could be made to the legislation;
- examine the efficiency and effectiveness of the regulatory arrangements governing the conduct of licensed practitioners involved in the sale of land, real estate transactions and the management of owners corporations; and
- recommend necessary amendments to improve the operation of legislative arrangements set in place by these Acts.

The Law Institute of Victoria (LIV) provided preliminary comments to Consumer Affairs Victoria (CAV) regarding the review in late 2015 and responded to CAV's Issues Paper 1 on the conduct of and institutional arrangements for estate agents, conveyancers and owners corporation managers, CAV's Issues Paper 2 on owners corporations and CAV's Issues Paper 3 on the sale of land and business between March and May 2016.

The LIV welcomes the opportunity to continue its contributions to CAV's review. This submission contains the LIV's response to the questions in CAV's paper, Options for reform of the Owners Corporations Act 2006 (Options Paper).

General Comments

The LIV makes the following general comments in relation to various matters canvassed in the Options Paper:

- in relation to decision-making within owners corporations (Part 3 of the Options Paper) and differential regulation of different-sized owners corporations (Part 5 of the Options Paper), the LIV suggests that consideration should be given to certain anamolies not identified in the Options Paper being addressed in legislative change. For example, some plans of subdivision include car park bays as part of a specified lot. Other plans have separate lots for car park bays and storage areas;

- in relation to differential regulation of different-sized owners corporations (Part 5 of the Options Paper), it is noted that while prescribed owners corporations must have a maintenance plan, there is nothing in the Act requiring that the plan be carried out. The LIV considers that implementation of maintenance plans should be at the discretion of the owners corporation (see question 17 of the LIV's April 2016 submission (attached) to CAV); and

- in relation to retirement vilages, "the special situation of owners corporations in retirement villages" is noted on page 59 of the Options Paper. However, the Options Paper generally does not address retirement villages. The LIV emphasises that retirement villages are unique and that many of the options in the Options Paper require separate consideration in the context of retirement villages.

Regulation of owners corporation managers

Licensing versus registration 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?

The Options Paper states that the current regulation of professional owners corporation managers is considered to be inadequate to address the risk of harm for consumers from the lack of knowledge and poor conduct of managers. Two options are specified in the Options Paper to address this issue.

Option 1A proposes the introduction of a full licensing scheme for professional owners corporation managers. The LIV supports this option, and considers that the following features make it the most practical and cost effective way of improving the quality and conduct of owners corporation managers:

- a formal training program can be carefully planned to cover all relevant topics; and
- a system of legislative sanctions for improper conduct improves discipline and manages risk which, in turn, produces competence and output.

Therefore, while the Options Paper forecasts costs associated with the establishment of a full licensing scheme, the LIV submits that the benefits of a structured program outweigh the costs of implementing that program.

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

The LIV considers that as with estate agency, owners corporation managers should be required to serve an apprenticeship before they become self-employed.

In relation to Option 1A, the Options Paper acknowledges the need for specific arrangements to minimise duplication for estate agents who are also registered owners corporation managers. In addition to the points identified in the Options Paper, the LIV suggests that an estate agent should not be required to pay an additional fee if the agent also manages owners corporations. For example, when completing an annual registration, an estate agent could tick a box that indicates its role as an owners corporation manager.

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

The Options Paper refers to the need for transition arrangements to allow existing owners corporation managers sufficient time to meet the new licensing requirements and to continue to provide management services to owners corporations. The LIV does not consider that any other matters require consideration for transitional arrangements under Option 1A.

Maintaining the knowledge and skills of owners corporation managers

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

The Options Paper notes that a further issue for any registration or licensing scheme is ensuring that owners corporation managers are up to date in their knowledge of the law and current practices to enhance the quality of advice and services they provide to owners corporations. Two options are specified in the Options Paper to address this issue.

The LIV supports Option 2A, which would mandate continuing professional development for owners corporation managers as a condition of being licensed or registered. The LIV considers that only a mandated continuing professional development program can ensure the ongoing knowledge and skill of owners corporation managers. The ongoing and targeted information and training program proposed under Option 2B could be an adjunct to mandatory continuing professional development.

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?

As continuing professional development is not currently mandatory for owners corporation managers, it is difficult to obtain substantial evidence of its benefits. However, LIV member feedback indicates that owners corporation managers are unlikely to undertake learning or training unless it is a requirement of being licensed or registered.

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?

The LIV suggests that the views of the regulators of other professions which require mandatory continuing professional development should be sought.

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

In the experience of LIV members, misconduct by an owners corporation manager can sometimes be linked to inadequate knowledge of that manager. Therefore, if decisions relating to misconduct are published, this may serve to encourage the ongoing maintenance of the knowledge and skills of owners corporation managers.

Unfair terms and termination of management contracts

8 Which option is fairer to both parties and why?

The Options Paper provides that some management contracts include terms that financially disadvantage owners corporations and make them difficult to terminate. The Options Paper identifies two options to address this. Option 3A proposes to prohibit unfair terms in management contracts. Option 3B would simplify the termination of management contracts 'without cause'.

The LIV considers that both options could be adopted, but favors Option 3A with qualification if only one option is to be implemented. The LIV refers to its November 2013 submission (attached) (questions 8, 9, 10, 11, 12 and 13) in relation to unfair terms in management contracts. In that submission, the LIV stated that:

- it does not consider it necessary to prohibit contract terms that require a step not required by the *Owners Corporations Act* 2006 (Vic). The LIV submitted that the parties should be able to contract freely rather than having the provisions of their contractual arrangements mandated absolutely by legislation;
- it considers that terms that limit an owners corporation's ability to prevent an unwanted assignment of the management contract should not be prohibited. The LIV suggested that it should be necessary to obtain the consent of the owners corporation to the assignment of the management contract, but that the consent must not be unreasonably withheld;
- terms that require an excessive period of notice for the early termination of a management contract should be prohibited. The LIV suggested that a reasonable period of notice is between two to three months, and that any longer period is excessive;
- it agrees that contracts which fix the amount that the owners corporation must pay the manager on an early termination where the amount is based on a genuine pre-estimate of the loss or damage should remain valid, even where the actual loss or damage suffered by the owners corporation manager is less than the pre-estimated amount;

- VCAT should have a clear power to deal with unfair terms in management contracts, without the need to show that there is a dispute 'relating to the exercise of a function by a manager'. Subject to there being no (or a nominal) filing fee, the extension of VCAT's powers would facilitate greater access to justice.

The LIV also refers to its November 2013 submission (question 5). In that submission, the LIV stated that:

- contract terms that allow an owners corporation manager to renew the contract at its option should be prohibited, as this denies the owners corporation the opportunity to consider the renewal;

- in the event a management contract expires without any agreement for renewal, there should be an amendment to the Act to provide for a short extension of the term of between two and three months.

The LIV also submits that the scope to amend the Australian Consumer Law to include management contracts should be explored.

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?

For example, while a requirement for an owners corporation to pay a pre-determined fee in the case of an early termination is not inherently unfair, is there nevertheless a case for prohibiting such fees on the grounds that they may be unfair and may intimidate owners corporations from terminating management contracts?

The Options Paper details a number of terms that would be prescribed as unfair terms and prohibited in management contracts under Option 3A. Subject to its comments in response to question 8, the LIV generally supports the prohibition of the terms identified in the Options Paper.

In addition to the terms identified in the Options Paper proposed to be prescribed as unfair, the LIV suggests that terms requiring predetermined fees to be paid by owners corporations where a management contract is terminated before expiry warrant consideration. If the contract is terminated the manager may sue for damages relating to the unexpired term of the management contract. Those damages are limited to loss of profits and not loss of fees. Accordingly, requiring an owners corporation to pay a predetermined fee by way of liquidated damages could be regarded as unfair if the fee is high in the order of a penalty.

Also, the LIV reiterates its suggestion in its March 2016 submission (question 74) that retirement village management contracts should be considered separately in the context of a review of the *Retirement Villages Act* 1986. It does not support options 3A or 3B in the context of retirement villages as the matter warrants separate consideration.

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

Option 3B proposes that an owners corporation would be able terminate a management contract 'without cause' on reasonable notice to the manager. If Option 3B is adopted, the LIV submits that 'reasonable' notice should be quantified and that a period of 4 weeks is appropriate. The LIV also considers that s 127 of the Act (Manager to return records) could be amended to refer to the return of records 'within 28 days of notice of termination of appointment'.

Also, the LIV reiterates its comments at question 9 regarding retirement village contracts.

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

The LIV is of the view that the termination right under Option 3B should only be able to be exercised after the first year of the management contract. Further, it should require an ordinary resolution at a general meeting at which the manager should be entitled to address the lot owners.

Also, the LIV reiterates its comments at question 9 regarding retirement village contracts.

Duties and obligations of owners corporation managers

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?

The Options Paper states that the current, general duties of owners corporation managers are inadequate to deal with a range of specific, 'real world' issues which would exist even with a licensing or enhanced registration scheme. This includes conflicts of interest for managers.

Option 4A in the Options Paper proposes to expand the obligations of owners corporation managers regarding procurement of goods and services, voting on owners corporation matters, and access to financial documents. In particular, it is proposed that managers be required to disclose:

- commissions or other payments received from suppliers of goods to the owners corporation; and
- disclose beneficial relationships with suppliers of goods or services to the owners corporation.

The LIV refers to its November 2013 submission (question 19) in which the LIV stated that express prohibitions on the manager's receipt of commissions or on entering into transactions involving a conflict of interest should not be required. However, the LIV submitted that in the interests of transparency, owners corporation managers should be required to provide full and prior written disclosure to owners corporations regarding commissions and transactions involving a conflict of interest.

Therefore, the LIV considers the above disclosure requirements and others detailed in the Options Paper for Option 4A are sufficient to address potential conflicts of interest for managers.

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?

In its March 2016 submission to CAV (question 78), the LIV submitted that pooled accounts should be prohibited. Therefore, the LIV supports Option 4B which proposes to prohibit managers from pooling the funds of separate owners corporations they manage in one bank account (with limited exceptions).

If managers are permitted to operate pooled accounts, the LIV considers that they should be required to disclose the amount of interest earned that is not passed onto the owners corporations they manage. The LIV further submits that penalties should apply if a manager fails to disclose these amounts.

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

Option 4C proposes that managers be required to keep trust accounts for money they receive from or on behalf of owners corporations, to maintain comprehensive record systems and be subject to independent auditing.

Some LIV members are of the view that Option 4C is unnecessary, and that the use of trust accounts should be optional, not mandatory. However, other members submit that they may have some benefit in ensuring that funds in those accounts are not taken in execution of a warrant or other debt recovery against the manager (although it is acknowledged that the accounts are in the name of the owners corporation rather than the manager).

In the event that trust accounts are required, the LIV considers that any interest earned should be retained by the owners corporation and not pass to government or divert to a fund. Owners corporations may have many hundreds of thousands of dollars set aside for contingency measures and expect to earn interest on these funds. Therefore, there could be an unintended consequence of resistance by owners to accumulate funds if they are denied interest on those funds.

Responsibilities of developers, occupiers and committee members

Developers' obligations

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?

The Options Paper states that the current, general duties of developers are inadequate either in their duration or in their capacity to address the adverse impacts on owners corporations of the contracts they enter into on behalf of owners corporations. It further concludes that the current general obligation of developers to take all reasonable steps to enforce any domestic building contract regarding defects in the common property is inadequate to protect owners corporations.

The Options Paper, therefore, canvasses a range of alternative options in relation to developers' obligations. Option 5A proposes the extension of the duration of the existing developers' obligations. Option 5B proposes the extension and expansion of developers' obligations in line with the Queensland approach. Option 5C proposes the extension and expansion of developers' obligations in line with the New South Wales approach. Option 5D is a stand-alone option for building defects, and proposes to introduce specific obligations for developers regarding building defects.

The LIV is of the view that the enhanced general obligations under Option 5A are insufficient, as the present general duties are not specific and apply only while developers own a majority of the lots and for a relatively short period of five years. Instead, the LIV refers to its April 2016 submission to CAV (attached) (question 27), in which it indicated support for the Queensland and New South Wales positions based on the summary of those positions in CAV's Issues Paper No.2 on owners corporations.

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?

As noted above, the LIV has indicated support for both the Queensland and New South Wales approaches as per its April 2016 submission to CAV. Having regard to the further detail regarding both options as outlined in the Options Paper, the LIV believes that Option 5C should be supported so that the existing developers' obligations are extended and expanded in line with the New South Wales approach. However, the LIV suggests that the additional developers' obligations which apply in Queensland under Option 5B should also be incorporated. Queensland is one of the leading jurisdictions in relation to developer obligations.

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

The LIV considers that Option 5D should be included as an adjunct to Options 5B and 5C. The LIV believes that this measure is necessary owing to the poor building practices that are often engaged in to the detriment and frustration of unsuspecting and innocent purchasers.

Duties and rights of owners and occupiers

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?

The Options Paper notes that the existing duties and rights of owners and occupiers do not address a number of issues relating to owners corporation records, access by owners corporations to private lots

to repair common property, alterations by owners to common property, smoke drift, pets, the installation of sustainability items on private lots, quiet enjoyment during renovations by lot owners, and restrictions on access to common property.

The Options Paper, therefore, advances a number of stand-alone options. Option 6A involves a proposal to clarify the right to inspect owners corporation records and align the basis for invalidating resolutions and rules. Option 6B proposes to give owners corporations access to private lots to repair common property. Option 6C proposes to prohibit lot owners from making alterations or repairs to common property. Option 6D proposes to expand rule-making power to enable rules to be made, for pets, smoke drift, renovations and access to common property. Option 6E proposes to make Model Rules for smoke drift, renovations and access to common property. Option 6F proposes to develop a Model Rule for fire safety advice to tenants and provide for owners corporations rules to be part of tenancy agreements. Option 6G proposes to make lot owners ultimately responsible for compliance by their tenants and guests with owners corporation rules.

Renovations

As specified in the LIV's April 2016 submission to CAV (question 39), the LIV supports the creation of a Model Rule in relation to changes to the external appearance of lots, particularly where proposals for minor changes are involved. For more significant changes, the LIV considers that having a Model Rule that prevents a lot owner from changing the outward appearance of a lot without the consent of the owners corporation would be useful, as otherwise inappropriate appearance and lack of uniformity could affect the value of other lots.

Access to common property

In relation to access to the common property, the LIV stated in its April 2016 submission to CAV (question 41) that lot owners and occupiers should have unrestricted access to the common property and services provided there is no disturbance to others unless the owners corporation has unanimously resolved to the contrary.

Pets and smoke drift

In its April 2016 submission to CAV, the LIV indicated that the regulation of pets and smoke drift are commonly raised issues in owners corporations. Accordingly, the LIV submits that there should be Model Rules concerning pets and smoking.

The LIV also considers that the proposed Model Rules are based on reasonable presumptions about what most lot owners in owners corporations would regard as unobjectionable, and that they are adequate.

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

The LIV considers that a Model Rule on fire-safety advice to tenants would, in principle, be unobjectionable.

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

The LIV stated in its April 2016 submission to CAV (question 42) that where an owners corporation is a certain size (for example, a prescribed owners corporation), all lot owners, tenants, occupiers and invitees should be bound by the owners corporation rules. In contrast to the position adopted by the LIV in that submission, Option 6G proposes that the Act be amended to make lot owners responsible for ensuring that their tenants and guests comply with the owners corporation rules.

However, the LIV notes that a lot owner's liability will be avoided if the lot owner complies with the obligation to give a copy of the rules to the tenant. Some LIV members consider that a more practical change in the industry could be achieved by adopting the Australian Capital Territory's model, under which lot owners are made separately liable for their occupier's/tenant's rule breaches 'unless the lot owner can establish that they took reasonable precautions to prevent the occupier's breach' (s107(3) *Unit Titles (Management) Act 2011* (ACT)).

The LIV notes that Option 6G helps to improve the position of owners corporations as it proposes to make lot owners ultimately responsible for tenants' and guests' compliance with owners corporation rules. Some LIV members have expressed concern that, currently, owners and agents acting for owners escape responsibility for tenants' conduct and advise that the problem resides with the owners corporation, such as in relation to nuisance from noisy guests and loud music, inebriated behaviour, and inappropriate disposal of rubbish.

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?

The LIV, in its April 2016 submission to CAV (question 43), suggested that a person bound by the owners corporation rules should be responsible for their own breaches and, in addition, should be required to exercise reasonable care to ensure their invitees comply with the owners corporation rules.

In principle, the LIV does not support a proposal for the joint and several liability of lot owners for breaches of owners corporation rules by their tenants and invitees. However, the LIV acknowledges that the proposal in Option 6G allows for the lot owner to avoid liability in relation to tenants if the lot owner has complied with the obligation to give a copy of the rules to the tenant.

Duties of committee members

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?

The Options Paper states that the existing duties of committee members do not specifically require them to act in their owners corporation's best interests. Accordingly, the Options Paper canvasses two alternative options. Option 7A proposes to expand the existing duties of committee members to include a duty to act in the owners corporation's best interests. Option 7B proposes to reformulate the duties of committee members according to the Associations Incorporation Reform Act model.

The LIV considers that while it would be sufficient to engage in an expansion of the present duties of committee members (Option 7A), it would be preferable to adopt a complete reformulation of obligations and responsibilities (Option 7B). This would give mandated specific direction to committee members beyond their personal interests.

Powers of owners corporations regarding community building, water rights and abandoned goods

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?

The Options Paper indicates that owners corporations do not have specific functions or powers relating to community building, water rights or disposing of abandoned goods. As such, the Options Paper advances three stand-alone options. Option 8A proposes to give owners corporations a community building function. Option 8B proposes to permit owners corporations to deal with water. Option 8C proposes to permit owners corporations to dispose of abandoned goods on common property.

The LIV does not presently see any risks or unintended consequences in relation to Option 8A.

In its April 2016 submission to CAV (question 3), the LIV submitted that owners corporations should be entitled to deal with water rights, including water that falls on common property. The LIV, therefore, supports Option 8B and does not consider that there are any risks or unintended consequences.

In its April 2016 submission to CAV (question 5), the LIV submitted that an owners corporation should have the power to dispose of abandoned goods on common property. The LIV, therefore, supports Option 8C, and does not consider that there are any significant risks or unintended consequences.

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

In its April 2016 submission to CAV (question 5), the LIV indicated its preference for adopting New South Wales' approach to goods abandoned on common property. In New South Wales, the owners corporation legislation allows for regulations to be made that confer powers on owners corporations to store or dispose of goods left on common property, with provision for the serving of notices on the owner or other relevant persons.

The LIV considers that an owners corporation should have the power to dispose of goods left on the common property provided that the owners corporation has given notice to the lot owners and occupiers (except in an emergency where notice should not be required) and no one has responded to that notice within a certain period of time.

In addition, the LIV recommends that consideration be given to relevant provisions in Part 9 of the *Residential Tenancies Act 1997* regarding goods left behind by tenants and residents. The LIV also notes that, as a further consideration, the provisions under the *Australian Consumer Law and Fair Trading Act 2012* could be adopted, as these provisions are broader than goods left in rented premises.

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

As noted above, Option 8C in the Options Paper proposes to permit owners corporations to dispose of abandoned goods on common property. This would include abandoned goods that block "reasonable" access to common property or to other private lots.

The LIV refers to its response to question 24, and reiterates its support for an owners corporation power to legally remove goods that inhibit "reasonable" access to common and private property. The LIV suggests that to avoid risks, the word "reasonable" should be defined.

In relation to motor vehicles blocking access, the LIV notes that privacy laws preclude determining the ownership of a registered vehicle and VicRoads or police will not reveal information without a court or tribunal order. As such, attempts to determine the identity of a motor vehicle are problematic and can only be performed accurately when advised by VicRoads. The LIV, therefore, submits that the legislation must address when a vehicle can be removed in instances when the owner cannot be identified without such an order.

Decision-making within owners corporations

Voting thresholds and the use of proxies

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

The Options Paper suggests that the problems associated with proxy farming, committee proxies, contractual voting restrictions and inactive owners corporations need to be addressed. The Options Paper therefore proposes as Option A to restrict proxy farming and committee proxies, and prohibit voting limitations in sale contracts. The LIV does not consider that the limitations on proxy farming proposed under Option 9A will have negative consequences for the governance of inactive owners corporations.

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

Option 9B proposes to give owners corporation managers greater authority to make decisions either through the development of Model Rules (Option 9B-1) or amendment of the Act (Option 9B-2). The LIV supports amendment of the Act, as this is the more direct approach.

Although not directly in response to the question, the LIV refers to the terminology of "inactive owners corporations" on page 34 of the Options Paper under Option 9B. The Options Paper refers to inactive owners corporations where no one, other than the manager, attends a meeting. In the LIV's view, this is not what "inactive" means. The definition of "inactive" is found in s 32F(2) of the *Sale of Land Act 1962*.

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?

The LIV considers it preferable that enhanced decision-making powers only be conferred subject to implementation of a licensing or enhanced registration scheme for managers, to ensure that managers are equipped with the requisite knowledge and skills to make decisions.

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?

Option 9C proposes to treat unopposed special resolutions as passed or as interim resolutions. Noting the difficulties that arise because of voter apathy, the LIV considers that an unopposed special resolution should be treated as passed.

Committee size and processes

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

The Options Paper states that the current maximum size of committees is too large for optimal decision-making and that the process for arranging committee ballots is unclear. Therefore, two stand-alone options are proposed. Option 10A suggests a reduction in the maximum committee size from twelve to seven members. Option 10B proposes to permit the chair or secretary of the committee to arrange a ballot.

The LIV considers that the size of an owners corporation committee should be sufficient to be reflective of, and representative of, all lot owners. In its April 2016 submission to CAV (question 38), the LIV suggested that if the owners corporation has more than 7 lots, 5 to 7 owners corporation committee members would seem appropriate. The LIV further stated that a committee of this size could adequately share the responsibility without management of the committee becoming too cumbersome. The LIV considers that more committee members results in a greater disparity in opinions and less effective functioning. The LIV, therefore, supports Option 10A.

In relation to the issue of who can arrange a ballot to improve its functioning, the LIV noted in its April 2016 submission to CAV (question 38) that s 111 of the *Owners Corporation Act 2006* (Vic) regulates the conduct of a committee ballot, but does not specify who may arrange a ballot. The LIV reiterates its view that s 111 should be aligned with s 83 of the Act, which provides that a ballot of the owners corporation may be arranged by the chairperson or secretary of the committee. The LIV, therefore, supports Option 10B.

Dispute resolution and legal proceedings

Internal dispute resolution process

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?

The Options Paper concludes that the engagement of the internal dispute resolution process of an owners corporation is inappropriate where the matter has been initiated by the owners corporation itself. It further states that Model Rule 6 (Dispute Resolution) does not provide for certain things that would facilitate dispute resolution. The Options Paper therefore advances two stand-alone options. Option 11A involves exempting owners corporations from the need to engage the internal dispute resolution process for matters they initiate. Option 11B proposes to revise Model Rule 6 (Dispute Resolution).

In its April 2016 submission to CAV (question 53), the LIV noted that, in the experience of its members, a good owners corporation manager will endeavour to seek to resolve disputes to avoid litigation. The LIV further stated that if communication cannot resolve the dispute, owners corporations would generally prefer to avoid the dispute resolution process under the Act and, instead, apply to VCAT.

LIV members indicate that VCAT will initiate mediation or a compulsory conference in appropriate circumstances, even if the dispute resolution process was followed. The LIV refers to the recent Victorian Supreme Court decision in *Shearman v Owners Corporation No 1,* where Bell J declared that an owners corporation may dispense with the dispute resolution process and commence proceedings if the respondent fails to lodge a complaint.

Having regard to the above, the LIV considers that Options 11A and 11B should both be supported in principle. However, in relation to the scope for referral of disputes for expert determination proposed in Option 11B, the LIV is concerned that this may result in delays of dispute resolution unless there are strict rules to prevent such delays.

The LIV also suggests that it should be considered whether the dispute resolution mechanisms contained in the *Retirement Villages Act 1986* should apply to the exclusion of the owners corporation dispute resolution mechanisms in the case of owners corporations in retirement villages.

Civil penalties for breaches of owners corporations rules

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

The Options Paper states that the maximum civil penalty that VCAT can impose for a breach of an owners corporation's rules of $250 appears to be inadequate to deter breaches, and that owners corporations have little incentive to apply to VCAT for penalties as it is a time-consuming process and the penalties go into the Victorian Property Fund. Accordingly, Option 12A proposes to increase the maximum civil penalty to $1,100.

The LIV supports the increase in the amount of civil penalties for breach of the rules in principle. The LIV refers to its April 2016 submission (question 47) in which the LIV proposed that civil penalties for breaches of the rules should be linked to penalty units so that they increase over time.

A key benefit of increased civil penalties is to promote awareness of the gravity of the matters which trigger those penalties.The LIV suggests that an education campaign would be necessary to ensure that there is widespread publicity about the consequences of breaches of owners corporation rules.

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

Options 12B, 12C, and 12D in the Options Paper represent alternative options for the payment of civil penalties. Option 12B proposes to allow owners corporations to impose and retain penalties. Option 12C proposes to retain VCAT's power to impose penalties but allow owners corporations to retain penalties. Option 12D proposes to allow owners corporations to impose penalties but retain the requirement to pay civil penalties to the Victorian Property Fund.

In its April 2016 submission to CAV (question 48), the LIV noted that penalties for breaches of the rules of owners corporations are paid to the Victorian Property Fund and that, in South Australia, owners corporation rules can provide for the owners corporation to impose a penalty for breach of the rules (within a prescribed maximum amount) that is payable to the owners corporation.

In its submission, the LIV expressed its preference for adoption of the South Australian position, so that owners corporations can impose a penalty for breach of the owners corporation rules. This was on the basis that the owners corporation has suffered loss as a consequence of a breach of an owners corporation rule and it should be compensated for its expenses (to a prescribed maximum amount) arising from the breach.

Consistent with the above views previously expressed by the LIV, the LIV considers that Option 12B achieves the optimal balance between fairness and effectiveness. Option 12B would allow owners

corporations to impose and retain civil penalties, with a right of appeal to VCAT by the offender where the burden of proof would be on the owners corporation (as is the case in South Australia).

Initiating legal proceedings

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?

The Options Paper suggests that the current requirement for a special resolution to initiate any legal proceedings except a debt-collection action in VCAT is too difficult to achieve in most situations, leaving owners corporations unable to pursue necessary or desirable legal actions. The Options Paper advances three alternative options. Option 13A proposes to lower the threshold to an ordinary resolution for any legal action. Option 13B proposes to lower the threshold to two-thirds support for any legal action. Option 13C proposes to apply different thresholds for actions in different Courts.

In its April 2016 submission to CAV (question 2), the LIV suggested that a lower threshold of lot owner support should be explored for an owners corporation to bring legal proceedings (for example, 60% rather than 75% support, or alternatively, if authorised by ordinary resolution to do so).

The LIV considers that Option 13A best balances the need for owners corporations to be able to commence legal action with protection for those lot owners opposed to an action. The LIV considers that the commencement of legal proceedings should be decided on the democratic right of the majority achieved by a simple majority of votes.

However, the LIV suggests that the safeguard of a special resolution should remain if the estimated costs of commencing legal proceedings are more than twice the annual fees of the owners corporation.

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?

The LIV considers that if Option 13A was adopted, the current provision of the Act that empowers VCAT to authorise a lot owner to commence proceedings on behalf of an owners corporation would still be necessary. For example, if a manager does not comply with s 127 of the Act to return owners corporation files of the owners corporation after termination of the manager's appointment, the owners corporation must mount legal proceedings against the manager and that would necessitate a special resolution under s 18. That may be difficult to obtain, as the manager holds records of the contact numbers and names and addresses of members of the owners corporation. In such circumstances, VCAT could permit a single lot owner to make an application on behalf of the owners corporation under s 165(1)(b) of the Act.

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?

The LIV reiterates its position in its April 2016 submission (question 1) that the threshold should not be set too low, as an owners corporation will incur costs when bringing legal proceedings.

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?

The Options Paper suggests that the current division of owners corporations into 'prescribed owners corporations', 2-lot subdivisions and those in-between, and the different levels of regulation to which they are subject, does not adequately regulate owners corporations. Therefore, the Options Paper

presents two alternative options. Option 14A proposes to introduce three new tiers of owners corporations. Option 14B proposes to introduce a four tiered system of owners corporations.

In its April 2016 submission (question 14), the LIV suggested that there is an ongoing requirement to differentiate between smaller and larger owners corporations, with larger owners corporations necessarily being subject to additional obligations. The LIV considers that Option 14B represents the most appropriate way to differentiate the level of regulation of owners corporations according to their size.

Option 14B proposes that that the exemptions for 2-lot subdivisions under the Act would continue to apply. The LIV considers that the present exemptions are not wholly satisfactory, as there is no legislative requirement for public liability on common property. The LIV, therefore, suggests that if Option 14B is adopted, this omission should be corrected in line with Option 14A (which requires public liability on common property for owners corporations with less than ten lots).

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?

The LIV considers that the size of owners corporations in each tier identified for Option 14B is appropriate for the requirements imposed on them.

Finances, insurance and maintenance

Defaulting lot owners

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

The Options Paper states that the current process for recovering unpaid fees from defaulting lot owners is not cost-efficient and imposes inequitable burdens on other lot owners. The Options Paper discusses four stand-alone options for debt recovery. Option 15A would require lot owners to lodge bonds for unpaid fees. Option 15B proposes to permit owners corporations to adopt payment plans in 'hardship' cases. Option 15C would permit owners corporations to recover pre-litigation debt collection costs from lot owners. Option 15D proposes to permit VCAT to make default judgments.

Two alternative options for litigation costs are also advanced in the Options Paper. Option 15E suggests alignment of VCAT's costs power with that of the Magistrates Court. Option 15F proposes to empower VCAT and courts to award all reasonable costs.

In its April 2016 submission to CAV (question 10), the LIV suggested that owners corporations should be able to apply a discount for the timely payment of fees or charges, as this would be an effective incentive for lot owners to pay fees and charges by the due date. While this does not directly respond to the question seeking views about alternatives for debt recovery, adoption of this proposal might reduce the frequency of late payment of fees by lot owners which necessitates debt recovery.

The LIV also proposes that the Act could allow for a number of options to be implemented as determined by the owners corporation. Owners corporation members could introduce special rules that allow the adoption of specific measures that may be applied against a lot owner with a history of "non-compliance". "Non-compliance" could be defined in the Act or in the owners corporation rules.

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

The LIV considers that the lodgement of bonds should not be mandatory as this may be an inequitable approach for the large proportion of lot owners who pay fees on time. Further, a mandatory system is likely to be cumbersome and difficult to manage.

The LIV suggests that the amount of any fee bond should not be left to the owners corporation to set. This is because the amount agreed by the majority of owners corporation members may be too low to deliver the desired effect against defaulting lot owners.

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

The LIV considers that a maximum bond amount should be set out in the Act, and that that amount should be equivalent to 12 months' fees.

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

The LIV considers that it will be most efficient if fee bonds are held by the owners corporation itself. However, the LIV acknowledges that this system would require additional management fees as the process will be administered by the owners corporation manager.

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

In its April 2016 submission to CAV (question 8) that there may be instances where the costs of debt recovery incurred by the owners corporation (for example, if a debt collector is engaged) exceed the amount of the debt. Some LIV members suggest that costs that can be recovered by the owners corporation should be commensurate with the work completed, regardless of the amount of the debt. However, it is acknowledged that this must be balanced against the risk that an owners corporation may use its ability to recover debt collection costs in a punitive way.

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?

As noted above, Option 15F in the Options Paper proposes to empower VCAT and courts to award all reasonable costs. The LIV supports this option and considers that it better achieves a balance between financial equity for lot owners, encouraging alternative dispute resolution and discouraging unnecessary use of lawyers.

Insurance

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

The Options Paper notes that there are a range of issues relating to the insurance obligations of owners corporations. The Options Paper further states that it was unclear from submissions received in response to CAV's Issues Paper 1 on owners corporations whether only minimal changes are required (to increase the level of public liability insurance and correct anomalies concerning plans of subdivision that contain separate buildings) or whether more substantial changes are required (which allow owners corporations to impose a range of levies relating to insurance issues). The Options Paper canvasses two alternative options. Option 16A proposes to increase the level of public liability insurance and correct anomalies concerning plans of subdivision that contain separate buildings. Option 16B would incorporate Option 16A plus allow the owners corporations to impose a range of levies relating to insurance issues.

If either option is adopted to increase the minimum public liability insurance amount, feedback from LIV members indicates that the cost to increase that amount to $20 million would be less than $100 per annum. LIV members do not have any data on the cost to increase the amount to $30 or $50 million.

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

The LIV considers that, in a democracy, there will always be differing opinions and that these decisions should be addressed at a general meeting and form part of the registered rules.

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?

The LIV considers that the owners corporation should be permitted under the Act to apply the appropriate levy as of right, so that it is then up to the aggrieved lot owner to apply to VCAT for any remedial order. The owners corporation will likely be advised by insurance brokers or underwriters as to where a particular use increases risk and will generally act in good faith in having risks assessed and applying levies.

Maintenance plans and maintenance funds

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

The Options Paper indicates that the existing requirements for maintenance plans and maintenance funds are inadequate to address maintenance requirements, particularly in apartment buildings with extensive infrastructure. The Options Paper, therefore, details three stand-alone options. Option 17A proposes to introduce new thresholds for mandatory maintenance plans and funds. Option 17B proposes to require mandatory funding of mandatory maintenance funds. Option 17C proposes to introduce mandatory contingency plans and funds for Tier 1 owners corporations.

The LIV noted in its April 2016 submission to CAV (question 15) that s 36 of the Act currently only requires prescribed owners corporations to prepare a maintenance plan. The LIV suggested that the scope/potential for all owners corporations to prepare a maintenance plan for the property for which it is responsible should be explored, whilst appreciating that such a requirement might be regarded as excessive for a small owners corporation.

In line with the above, the LIV supports either Options 17A or 17B for maintenance plans and funds.

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?

In its April 2016 submission to CAV (question 17), the LIV submitted that maintenance plans should be mandatory for all owners corporations, but that the implementation of any such plan should be at the discretion of the owners corporation.

In light of this, the LIV suggests that 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. The LIV prefers this over a fixed proportion of fees being set out in the Act.

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 LIV considers that the resolution as to the amount to be set aside should be an ordinary resolution. The LIV also considers that it should be mandated in the Act that the designated part of the fees must be sufficient to fund the plan.

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

The LIV considers that, for a fixed proportion of fees, the amount should be limited to a maximum percentage of the annual budget.

Increased expenditure arising from lot use

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?

The LIV considers that it would be difficult to identify criteria or principles for an owners corporation to apply in assessing how much of its general repair and maintenance costs arise from a particular use of a lot. The LIV, therefore, suggests that if the Act allows recovery of these costs, the owners corporation should be required to seek agreement with the relevant lot owner and, failing that, be required to make an application to VCAT.

Part 5 of the Subdivision Act

Common seals

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

The Options Paper concludes that the requirement for owners corporations to execute contracts and other official documents with a common seal no longer performs a meaningful function. The Options Paper canvasses one stand-alone option which proposes the removal of the requirement for an owners corporation to have a common seal.

In its April 2016 submission to CAV (question 6), the LIV stated that, in its view, common seals no longer serve a meaningful purpose. The LIV suggested that two lot owners should be able to execute a contract on behalf of the owners corporation, which would closely align with the requirements under the *Corporations Act 2001* for companies to execute a contract. Further, the LIV suggested that execution by the lot owners should be stated to be pursuant to a resolution, and the details of the resolution should be specified.

In line with the above, the LIV supports Option 19 under which there would be no requirement to have a common seal. The LIV does not consider that any risks would arise from removing the requirement for owners corporations to have and use a common seal.

Procedure for initial setting of and changes to lot liability and lot entitlement

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

The Options Paper expresses concern that the current process for setting initial lot liability and entitlement does not ensure fairness and suggests that the current process for changing lot liability and entitlement requires some improvement. The Options Paper advances four alternative options for initial setting of lot liability and lot entitlement. Option 20A proposes to retain the developers' discretion but place a time limit on their application. Option 20B proposes to apply the current criteria for changes to lot liability and entitlement to initial settings – simple principles. Option 20C proposes to set lot liability and entitlement according to more detailed principles. Option 20D proposes to set lot liability and entitlement according to specified criteria. The Options Paper also considered one stand-alone option for changing lot liability. Option 20E proposes to improve the current provisions for changes to lot liability and entitlement.

In its April 2016 submission to CAV (question 61), the LIV stated that it does not consider that developers should be able to set lot entitlement and lot liability, and that this should instead be allocated by a licensed surveyor or other appropriate person pursuant to specified legislative criteria. The LIV also suggested that consideration could be given to persons other than licensed surveyors who might be

appropriate to set lot entitlement and liability. The LIV also submitted that independence of the licensed surveyor or other person setting the lot liability and entitlement should not be critical if the licensed surveyor or other person is bound to follow certain criteria.

The LIV considers that the proposals advanced in its April 2016 submission to CAV properly account for considerations of fairness. It is paramount that considerations of fairness dictate the initial settings of lot liability and entitlement.

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?

For the reasons specified in its response to question 54, the LIV supports either Option 20C (based on the Queensland model) to set lot liability according to more detailed principles, or Option 20D which proposes to set lot liability according to specified criteria.

The LIV notes that the model in Option 20C has been used successfully in Queensland which gives merit to such a model being used in Victoria. This option, which limits the developer's discretion to adopt lot entitlement and liability, would result in a fairer result for all.

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)?

In its April 2016 submission to CAV (question 61), the LIV suggested that developers should not be able to set lot entitlement and lot liability, and that this should instead be allocated by a licensed surveyor or other appropriate person applying specified legislative criteria. On this basis, the LIV considers that there are no circumstances under which options 20B to 20D could be implemented by the developer rather than a licensed surveyor. Chiefly, the LIV submits that a licensed surveyor would be expected to have completed formal training and ongoing professional development as well as face sanctions for unprofessional conduct. In contrast, a developer is less likely to possess these skills.

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

The LIV considers that surveyors should be required to provide as much detail as is reasonable in the circumstances. For example, if there is a problematic item of plant and equipment servicing the building where it is difficult to apportion lot liability, the surveyor should be required to identify such items of plant and equipment and comment on how the lot liability has been set so that when issues arise in the future, the parties involved will have some insight as to why the lot liability was set in that way.

The LIV suggests that this information should be detailed in the application for certification of the plan of subdivision. The LIV also considers that it should be a mandatory requirement that this information be produced at the first meeting of the owners corporation and be attached to the minutes of that meeting. In its April 2016 submission to CAV (question 61), the LIV also suggested that an independent person or referral authority (such as a new role of Owners Corporation Commissioner) could review plans for creation of an owners corporation and the proposed allocation of lot liability and entitlement.

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?

In its April 2016 submission to CAV (question 61), the LIV indicated a preference for strict time limits being imposed on owners corporations to register changes to the plan of subvision (including lot entitlement and lot liability) to ensure that the register always has current information.

As per the above, the LIV considers that if Option 20E is adopted, 30 days is a reasonable time for an owners corporation to notify Land Use Victoria (formerly Land Victoria) of changes to lot liability and entitlement.

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?

Option 20E also proposes that where an application has been made to VCAT to change a plan of subdivision (including a change to lot entitlement or liability), in the absence of a unanimous resolution

and where one lot owner who owns more than half of the total lot entitlement has not consented to the application, VCAT would be able to hear the application if all other lot owners consented.

The LIV considers that it is reasonable that VCAT should be able to hear an application where all lot owners except one (who holds greater than 50% entitlement) wish to change the lot entitlement and liability. The owner of the lot with greater than 50% entitlement should have no concerns about such an application unless the lot entitlement and liability are unfair.

Sale and redevelopment of apartment buildings

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?

The Options Paper states that the current requirement for a unanimous resolution for the sale of a building governed by an owners corporation, including for redevelopment, is difficult to achieve and may prevent more efficient land use. The Options Paper, therefore, advances five alternative options. Option 21A proposes to reduce the threshold to 75 per cent for all owners corporations (New South Wales model). Option 21B proposes to reduce the threshold to 75 per cent for all owners corporations (less restrictive model). Option 21C proposes to adopt a tiered approach to the threshold according to building age (Northern Territory four-tiered model). Option 21D proposes to adopt a tiered approach to the threshold according to building age (simpler three-tiered model). Option 21E proposes to reduce threshold to 75 per cent for commercial buildings only.

In its April 2016 submission to CAV (question 60), the LIV expressed support for the approach in New South Wales which includes a process for the collective sale or development of a building that requires an owners corporation to form a strata renewal committee and develop a strata renewal plan.

The LIV considers that Option 21A should be adopted in a similar manner to the NSW model as long as VCAT must consider the issues raised by any minority lot owners before approving a plan. This option appears to be the least complicated of the options and is fairest because VCAT will need to consider the rights of all parties before granting an application. VCAT should be given guidelines in relation to what factors would result in it being very likely that an application be granted. For example:

a. if the building was older than 25 years; or
b. if the building was going to require repair work over a threshold $amount; or
c. if less than 10% of the lot owners by unit entitlement rejected the redevelopment, then the application should be granted.

If however Option 21A proves unworkable because VCAT does not approve sufficient applications, then steps could be taken later on to introduce a less restrictive approach.

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

The LIV considers that the voting thresholds under Option 21D all appear to be generally reasonable. However, the LIV suggests that for Tier 2, the scope to increase the threshold beyond 80% (for example, to 90%) should be explored, given that this will apply in the scenario where a building is only 10 to 25 years old.

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

The LIV is of the view that Option 21E-1 is to be preferred. This is because this option achieves more flexibility in relation to selling or redeveloping unit development but ensures that property rights are still addressed. In particular, it is reasonable to require a plan to be approved by VCAT so that all parties have an opportunity to be properly heard.

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?

The LIV considers that the 75% threshold is acceptable but submits that the burden of proof should remain with the proponents of the plan and not minority owners.

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

This reform of the Subdivision Act will help decision making processes because:

- if major repairs are required to a building the owners will also be able to consider selling or redeveloping the building rather than just spending monies on repairs;
- recalcitrant owners will not be able to sit on their hands and do nothing; and
- it will assist in breaking deadlocks between owners which different interests such as owner/occupier and investors.

The LIV also considers that the options for reform will incorporate additional flexibility and fairness to the decision-making process in relation to a building's longevity.

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?

The Options Paper concludes that the current provisions of the Act do not provide for the operation of owners corporations in retirement villages in a way that is consistent with the aims of the *Retirement Villages Act 1986* (the Retirement Villages Act) regarding the conduct of annual meetings, increases in owners corporation fees and the participation of lessee-residents. The Options Paper advances two alternatives for reform. Option 22A proposes to require separate committees for owners corporations and retirement village residents. Option 22B proposes to require separate committees and annual general meetings for owners corporations and retirement village residents.

In its April 2016 submission to CAV (question 57), the LIV suggested that the annual general meeting of the owners corporation should continue to double as the annual general meeting of the retirement village. The LIV expressed a preference for timing and procedures for calling the meeting being in accordance with the Retirement Villages Act rather than the Act. This was because the two Acts contain different requirements, and retirement village operators would require greater certainty regarding which set of requirements apply. Further, it is also highly difficult and expensive to resolve a dispute where both Acts apply.

The LIV supports Option 22A with the first sub-alternative, as it largely preserves the current position but seeks to address the problems in combining annual meetings.

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?

The LIV supports the first sub-alternative, which provides for the retention of combined annual general meetings (as opposed to allowing the village operator to decide whether to hold joint or separate meetings under the second sub-alternative). The first sub-alternative ensures that the form of future meetings is not subject to change at the will of the retirement village operator and also acknowledges the different voting entitlments for resolutions under each Act.