micm property
OWNERS CORPORATION

Melbourne Inner City Management Pty Ltd ABN: 39 060 312 012
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Regulation of owners corporation managers

1 What option does 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?	MICM would support Option 1A being the introduction of a full licensing scheme for OC Managers in order to enhance the overall professionalism, qualification and commitment of OC Managers. The increase in associated costs would be absorbed by the manager as a business operational overhead to gain licensing status. This is not too dissimilar to the Real Estate agents licensing requirements (BLA).
2 What other eligibility criteria should be considered under Option 1A or Option 1B?	Other eligibility criteria that should be considered is a requirement that OC Managers demonstrate that their personnel are appropriately trained, qualified & experienced to represent them. To achieve licensing requirements there should be additional onus on qualified staff in the form of educational requirements either through industry associated courses (SCA/REIV/PCA) or educational institutions such as RMIT, Swinburne etc.
3 What other matters are important to consider for the transitional arrangements under Option 1A?	Existing staff in the industry should be able to continue to work in the industry sector subject to completing the minimum level of educational qualifications. Dispensation to course units could be provided based on previous educational experience.
4 Which option, and why, would be more effective in ensuring the ongoing knowledge and skill of owners corporation managers?	Once licensed and minimum educational requirements are achieved, both Options 2A or 2B would enhance ongoing professional development. In accounting and valuations professions (both disciplines which can be applied to OC management) there is an ongoing CPD point requirement. Similarly there should be an ongoing requirement in OC, if the level of qualifications is to increase over time thereby providing credibility to the industry. It is far too easy for individuals to enter the sector of OC management and unless licensing is introduced to attract individuals who see this career as a serious and industry accredited sector, then the OC industry will continue to be regarded as a second tier career option. In other words it is the next generation of qualified students in property related courses (Valuations, Property degrees/diploma's/certificates) who will lift the standard of OC managers in the medium to short term.

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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?	Further to comments in Question 4 above, if you compare the OC Industry to the licensing requirements in the commercial real estate property sector and associated industries such as Asset Management, Valuations, Funds Management, Finance and Accounting, Legal professions, the overall level of skill and professional standards is significantly higher and more evident. In addition Managers operating in states where strict controls apply & PD is mandatory are held in considerably higher regard that elsewhere. This is a compelling reason to elevate levels of PD.
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?	Delivery of PD should be restricted to the qualified bodies which would also provide the initial educational courses such as RMIT, Swinburne, SCAV, REIV PCA, and CAV. The ongoing PD is therefore the ongoing reinforcement of industry requirements and changes to legislation governing the OC Sector. Expanding delivery of PD programmes to other unrelated training organizations has the potential to weaken PD programmes delivered by organizations whose primary concern is financial.
7 What other options are there to support the ongoing maintenance of the knowledge and skills of owners corporation managers?	No further comment.
8 Which option is fairer to both parties and why?	Neither is a very good option but in terms of fairness – probably Option 3B comes closest.
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?	All terms noted in Options 3A should be included. Specifically any contract term that includes an automatic renewal or extension should not be permissible. Any contract that is not renewed in writing should revert to a month to month agreement, on the same terms and conditions, until a new contract is negotiated and executed
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?	

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10 Should 'reasonable' notice be quantified under Option 3B and, if so, for how long?	Reasonable notice should be quantified e.g. 1 month for cause (i.e. non-performance). Contracts should make provisions for written notice to be provided the manager for non-performance, with the manager having 14 days to rectify the non-performance to the satisfaction of the OC (principal). If the non-performance is not satisfactorily addressed with the Principal and to their satisfaction (acting reasonably) then the Principal has the right to terminate on the provision of a further written notice of 30 days. Once terminated, Managers should cooperate in the orderly handover to the newly appointed OC Manager and continue to manage the property in accordance with the terms of engagement.
11 What is the best and fairest way to exercise the termination right under Option 3B?	A period prior, to which a contract cannot be terminated, should be specified to ensure that disgruntled individuals do not influence OC Members & encourage frequent management changes which is destabilizing for both parties say minimum of 12-18 months excluding non-performance. Termination post that period to be in accordance with non-performance provision noted in question 10 above.
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 the proposed disclosure requirements are sufficient to address conflicts without exception. An OC manager does not appoint contractors to perform works without having a prior relationship and understanding of whether there is a beneficial relationship which will result in a commission or financial benefit. Prior to a Manager appointing a contractor they are required to ensure that the contractor not only has the skill and competencies to perform the works, but is compliant from a licensing, business registration, Insurance (public, products and WorkCover) and Occupational & Health & Safety compliance (i.e. Job Safety Analysis – JSA, OR Safe Work Method Statements- SWMS).
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?	4B does address and provide further direction/clarification with the pooling of funds however as it relies on manager compliance, it does not address the risks associated with pooling where ideal management does not occur. Therefore the preferred option would be 4C for funds to hold in a trust account as the service being provided is aligned with the more stringent and regulated requirements of real estate licensing (BLA), where funds are being held in trust.
14 What are the risks, if any, of unintended consequences arising with the measures proposed in Option 4B or Option 4C?	There is always a risk that in an environment of unregulated management of OC funds that there could be the temptation for the mis-appropriation of funds until strict licensing and mandatory compliance with Australian/international accounting standards are the norn regulated by the relevant governing body.

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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?	Option 5A is sufficient. With regard to the developer appointing an OC Manager which is a related entity, we wish to outline that our experience tells a different story where the Developer and the appointed OC Manager (related entity) work hand in hand to ensure continuity of building services, presentation and community living. There are many developers of large strata buildings in the CBD and Southbank areas of Melbourne that already have in place "fair and equitable" initial service agreements and management contracts. The Options that have been provided would appear to apply to smaller developers and developments without consideration for case experiences that would support an alternative view. Points in case, Central Equity have been developing in Melbourne's CBD and Southbank for over 20 years. MICM Property is a wholly owned subsidiary and has provided Body Corporate/Owners Corporation services to all of their developments during those years. Initial Terms of Appointment have always been for 5 (five) years. They have developed over 70 residential buildings over that period and MICM have sustained our management services to those developments over the entire history of most properties. After the initial 5 year term, we have been successful in re-contracting because of our good governance/risk management practices, bulk buying power and competitive rates. The stakeholders and decision makers in those developments have been free to contract with any management company and some have periodically tendered for management services. The fact that MICM have retained those managements supports that the existing system, where the manager proactively fulfils its contracted roles and responsibilities, does work to the benefit of owners – not the detriment. This is the successful side of Developer / Manager relationships. What has significantly contributed to the success of that relationship has been the consistency of service, in-depth knowledge of the property and transparent collaboration of all stakeholders. When a new development is handed over there are a plethora of building and essential service systems in place that require specialty experience, capabilities and operational skills. Who better placed to assist with the initiation of these new sites than the developer? Who better placed to have access to sometimes proprietary building and construction information than the developer? As any long standing developer in Victoria would propose, setting initial budgets and fees inordinately low only damages their reputation and may limit their ability to market to the growing number of repeat purchasers. In these instances the Developer is not seeking to maintain a long-standing relationship with their clients and once the development units are sold, they move on and seek to distance themselves.

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	As a subsidiary company, MICM can effectively and efficiently on-board a new development with the support and assistance of the developer. The developer has the relationship with the general contractor that flows through to sub-contractors and suppliers of goods. The risk to new owners is mitigated and the security of their investment protected. Setting up/initializing a new building is an extensive and expensive exercise for a manager. Without security of tenure, the required expertise cannot be funded appropriately and the provision of necessary services becomes untenable. How does a manager hire and train qualified staff if contracts are limited to 3 months? If we have rogues and unqualified managers in the industry in Victoria now – it will only get worse under a NSW approach. Therefore the real issue is not whether the OC Manager is a related entity or not, but rather adherence to good governance, disclosure, licensing and performance based contract of appointment which are fair and equitable to both parties, with either party having the ability to terminate for either non performance, or without cause after a 12 month period on the provision of appropriate written notice.
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?	Not necessary, the NSW and Queensland models could destroy the industry by reducing competition from existing qualified managers whose only consideration is their parent ownership. Measures to monitor arm's length transactions would be more beneficial.
17 Why would the 'building defects' obligation is necessary?	This question falls under the "Responsibilities of developers" section of this Consumer Law Review – clearly a misnomer. Builders – who are regulated by the Victorian Building Authority and numerous other statutory pieces of legislation, should be held more accountable for building standards, materials, workmanship. Legislation should be tightened to prevent consumer's being left with poor construction concerns/defects. A clearer path to the courts that enforce building/builder controls should be delineated so that ordinary consumers – including owners in a strata plan – can get cases determined. The current OC Act does not allow for building claims without a 75% resolution – almost impossible in most large OC's. DELWP needs to look at this problem at the source – the construction industry – NOT THE DEVELOPER.
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	YES

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(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?	Potentially NO, this is why the owners corporation must have the ability to more readily change model rules acting reasonably and/or by special resolution.
19 Would a Model Rule on fire-safety advice to tenants, in principle, be unobjectionable, and if so, why?	None that can be seen
20 Do all or only some of the options improve the position of owners corporations and why?	All as presented seem to improve the position of the owners corporations
21 What additional justification, if any, is needed for the proposal for the joint and several liabilities of lot owners for breaches of owners corporation rules by their tenants and invitees?	None covered in above
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?	• Agree with 7A and to include a simple online training course for all new members of a committee • Review of the conflict of interest requirement and who make the judgement on or if there is a conflict of interest and suggest this be delegated to the OC Manager • Totally agree with 7B but this may limit owners wanting to be members of the CoM but if offered a simple online training course this may solve this issue

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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?	No apparent risks.
24 What is the best approach for dealing with abandoned goods on common property, and why?	Advise the owner (owner obligations to OC for tenants) of the issue and give reasonable time for them to remove then if not compliant remove the goods 28 days is reasonable time to affect
25 What are the benefits and risks of the additional power proposed for goods that block access?	No apparent risks.
Decision-making within owners corporations	
26 How might the limitations on proxy farming have negative consequences for the governance of inactive owners corporations?	The term proxy farming can be used out of context and should be restricted to instances where persons make direct or indirect demands for proxies from lot owners. Because of the democratic process, not all decisions are found acceptable and in many cases the reality is that proxies given will carry the day. This is often the product of disengagement by lot owners. Restrictions on proxy giving can undermine the democratic process, dilute enthusiasm of the "doers" in an OC and possibly result in powers being usurped by a vocal minority with a hidden agenda as against owners who may canvas for proxies to be able to make decisions for the benefit of the members. Bad decisions by proxy holders inevitably can lead to disenchantment by proxy givers and subsequent revocation or discontinuance of the proxy.
27 Which approach to giving owners corporation managers decision-making powers in Option 9B is the more effective and why?	Special Resolutions should be reserved for special issues and specifying the decision making power of the Manager via a model rule as suggested in Option 9B-1 would seem to be a simple and effective solution.

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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?	Licensing or introduction of an enhanced registration scheme for Managers will not of themselves overcome the possibility of damage to members in an OC. Decision making (assuming honesty of the Manager) relies heavily on competence and experience of the Manager and emphasis should be placed on enhancing the management skillsets of Managers.
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?	Special Resolutions are seldom carried and interim Special Resolutions still require a great deal of work in having them passed whether the OC Members are generally active or not. It makes sense to have the Interim Special Resolution threshold lowered from 50% to 25% if no more than 5% of the total votes registered are against the resolution. At the same time, a review of the Interim Special Resolution should be permitted by the petitioning of a reduced quantum of Lot Entitlements of the order of 10%. Detachment by lot owners should not be allowed to cause the democratic decision making process to be stifled.
30 How might reducing the size of an owners corporation committee and providing for who can arrange a ballot improve its functioning?	Committees of 12 members are too large as a general rule and an upper limit on their size (on the basis of the total fees and Maintenance Fund contributions) might be appropriate. Instead of setting a numerical limit however, I would suggest that the size of a Committee should be determined by the complexity of the affairs of the OC and this can often be determined by the level of fees collected. We must remember that when specialised help is required from non-committee lot owners, such persons might be seconded for specific projects or needs. The arranging of Committee ballots is in fact usually done in practice by the Chairperson or Secretary and should be clarified. Most decisions (and particularly the larger and more important ones) however are made at Committee meetings.

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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?	Option 11A – Agree. An owner's corporation should be except from the need to engage the internal dispute resolution process for any matter which they initiate. Option 11B – Revise Model Rule 6 –This option provides more acceptable options to address dispute once brought to the attention of all parties. To the ability to refer dispute for expert determination (VCAT), is consist with current regulations.
32 What are the benefits and risks of increasing the amount of the civil penalties for breaches of the rules?	Option 12B – Allow owners corporations to impose and retain penalties – This is what most OC want and have requested during the years. Breaches of OC Rules often cost OC charges in managers' time and resources but most importantly will be more of a deterrent to the offenders of the rules.
33 Which option for reforming the imposition and payment of civil penalties achieves the best balance between fairness and effectiveness, and why?	Option 12B – Achieve the best balance between fairness and effectiveness as acts as deterrent for reoffending residents and offsets the cost in occur by the OC/Manager for pursuing the breach.
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?	Option13C – Apply different thresholds for actions in different Courts – This makes common sense – Also should make the process quicker for most proceedings.
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?	We not agree with an option where and ordinary resolution would be required to commence any legal proceedings, this removes the current safe guard of the special resolution, and could result in committees instigating legal proceedings at whim.

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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?	Yes, a reduction between 50 – 60% would be more appropriated.

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?	14B, because seeking to uplift professionalism and service delivery in the industry, and increasing level of mandatory requirement to protect lot owners investment.
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?	Overview of proposed requirements for new tiers of owners corporations for Option A

	Financial statements	Audit	Mandatory building & public liability insurance	Mandatory committee	Mandatory maintenance plan/fund	Mandatory professional manager	Contingency Fund
Tier 1 (51 lots or more)	Yes	Independent audit	Yes	Yes	Yes	Yes	Yes

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	Tier 2 (3 - 50 lots)	Yes if fees are levied	Independent Audit	Yes Yes	Yes	Yes	Yes	Optional
	Tier 3 (2 lots)	Yes	Optional	Yes	No	Optional	No	No

Finances, insurance and maintenance

15A: Require lot owners to lodge bonds for unpaid fees

As majority of lot owners do pay on time, it does become a financial imposition on these owners. Their bond could be better invested privately to provide a return to them as opposed to being held by the Owners Corporation and interest earned benefitting the OC. Also by requiring minimum level of bond to be held at set level, it adds additional work to the debt collection process of chasing up bond money as well as outstanding OC fees.

15B: Allow owners corporations to adopt payment plans in 'hardship' cases

Already in practice

15C: Allow owners corporations to recover pre-litigation debt-collection costs from lot

Allowing OC to charge Final Fee notice and accepting this amount to be claimed at VCAT. Owners are more likely to make payment on time knowing there is additional $55 to be charged when a Final Fee is issued and that this cost will be awarded to the OC if the matter proceeds to VCAT

15D: Empower VCAT to make default judgements

15F: Empower VCAT and courts to award all reasonable costs

The OC should not be penalising for doing the right thing and pursuing all avenues in order to recover the debt. VCAT and courts should award all reasonable costs for the time and effort put into debt recovery. Owners should be encouraged to pay their fees on time and those who do should be have to subsidise for those who don't while still being able to access all common areas and facilities. The Act may set a guideline as to the cost claimable. At this moment, we do use lawyers as their costs are usually awarded at VCAT subject to it being a

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reasonable amount as determined by the member. This shouldn't reduce the incentive for OC to resolve matter before taking legal action as there is still a substantial amount of time and effort to apply and attend a VCAT hearing. Legal action should always be a final resort for an OC after all other efforts have been exhausted to enable debt to be paid.	
39 What other options could be considered to enable owners corporations to recover debts?	A default to be recorded in the consumer credit report once it exceeds an amount
40 Should the amount of any fee bond be left to owners corporations to set and, if so why?	If a bond amount is to be set, it should be set as a time frame i.e. 1 quarter instead of set amount due to the varying budget between OCs
41 Should a maximum amount be set out in the Act and, if so, what should that amount be?	Again this should be set as a time frame i.e. 2 quarters
42 Would it be more efficient if fee bonds were held by the owners corporation itself, the owners corporation manager or the RTBA?	Owners Corporation so it is reflected in the financials which can be audited promoting transparency
43 Should owners corporations be able to recover costs that exceed the debt or should they be capped at level of the debt?	Exceed is deemed reasonable
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?	15F

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45 What would be the cost of increasing the minimum public liability insurance amount to $20, $30 and $50 million?	This is a rather subjective question with each insurer having their own basis of underwriting criteria in determination of premium for this element of cover. The Majority of Owners Corporations within our portfolio currently maintains a minimum level of Public Liability Insurance of $20 Million. Recently, an Owners Corporation with insurable assets of $115 Million increased their Public Liability Cover from $20 to $50 Million at an additional cost of $1,500 inclusive of GST & Stamp Duty
46 How might the equity achieved by the powers proposed under Option 16B outweigh the potential problems?	The issues addressed within this option are more of an OC operational element than an insurance placement activity. The imposition of excess payment by lot owners is in some form already in operation within numerous OC's. The application of an 'increased' premium cost to individual lots where a particular lot increases the risk would require the assistance of the insurer in determining the impost that is to apply.
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:	Once again, this question is outside of the insurance placement activity and should be answered from the perspective of the practicality of managing an OC from the OC / OC Managers perspective.
(a) required to apply to VCAT for the appropriate order, or	No.
(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?	Yes. Utilising an appropriate calculation or justification provided by the insurer to support increase premium to specific lot due to its use and potential increase risk.
48 Which option or options do you prefer for maintenance plans and funds, and how does the option or options address the issue?	Option 17 B require mandatory funding of mandatory maintenance plans is the option is best suited, as by implementing this fund there is always a source of funding available to carry out urgent repairs and also planned maintenance as per the life cycle maintenance plans.

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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?	We believe that the fees should be set and relevant to the size of their lots; this to me would be a fairer solution in regards to contributions to the maintenance plan.
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?	This is not really part of my field but I would suggest that it should be an ordinary resolution
51 If a fixed proportion of fees, what should that be for both types of fund?	The fees should be based on the size of the title and usage.
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?	It may depend what the lot is, and also what it is used for? What size is the lot in relation to the other OC lots? This would be something that may be able to be captured thorough coding in the Accounts area?
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?	An Owners Corporation should not be required to have a common seal. Companies were previously required to have seals, but since 1988 are not required to have a seal and documents may be executed by a company without a seal. There is no reason to differentiate an Owners Corporation from a company in regard to a common seal. Although the

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	signature of the company, most documents affecting Owners Corporation such as work orders are not issued under seal. Where documents are at times required to be executed under seal, such as an assignment of the lease or licence of common property, this can give rise to a delay in arranging for committee members to witness the affixing of the seal. If an enabling resolution contemplating use of the seal has not been previously passed, it is necessary that a resolution is passed at that time. Compounding these delays is that documents are often forwarded with an attestation clause appropriate for companies and not for Owners Corporations which requires the resubmission of such documents.
54 How much should developers' property rights regarding initial settings of lot liability and entitlement give way to considerations of fairness?	Developers should retain the right to determine Lot liability and entitlement, to be set on a fair and equitable basis. Where a Lot is being sold off the plan, there should be an obligation that the draft plan of subdivision and schedule of Lot entitlement and liability is displayed in the contract of sale. A change to the liability or entitlement of any Lot should be notified to all Lot owners (fair and equitable basis). In conjunction with any change to a proposed Plan of Subdivision, the party seeking to make the change should have to set out the reason or reasons why, which should have to be given to all parties who had entered into a contract of sale.
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?	Option 20D using specified criteria for the setting of Lot entitlement and liability. If set criteria are used for the determination of Lot entitlement and liability this should provide certainty both within the particular Plan of Subdivision and also consistency between plans which avoids the current arbitrary discussion by members of variations between Owners Corporations.
56 Under what circumstances options 20B to 20D could be implemented by the developer rather than a licensed surveyor (which would be cheaper and quicker)?	The setting of Lot liability and entitlement is properly a matter for the developer of the property who should have the choice as to whether a land surveyor will be engaged If a prospective purchaser is aware of the schedule and does not agree then it is fair and it is open to the purchaser who can elect not to enter into a contract of sale.

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57 To what extent should the surveyor (or developer) be required to set out how the criteria were applied in achieving the settings?	If it is not proposed to specify criteria for the setting of Lot entitlement and liability (option 20D) the registrant of the plan should be required to set the particular basis used in setting the schedule. The current statement regarding the setting of liability and entitlement typically uses a generic statement to satisfy section 27F of the Subdivision Act 1988. Such statements don't provide any assistance in determining the basis on which the liability and entitlement was set. If the proposal to specify criteria is not adopted the statement for the purposes of section 27F should require that a proper basis to the satisfaction of the Registrar is provided so the basis is readily apparent. For example, it could determine that the habitable area of a Lot as a proportion of the total habitable area was used. Any variation based upon the storey on which the Lot is located could also be specified. In this manner, owners will understand the basis for setting liability and entitlement which may be taken into consideration if there is a proposal to change the schedule in the future.
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?	Thirty (30) days is a reasonable time to notify Land Victoria. The change should not take effect until lodged with Land Victoria. Any levies struck prior to lodgement should be based on Lot liability prevailing at that time. Voting rights should also be determined on the prevailing entitlement until registration of the change.
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	Where a variation to Lot entitlement and liability is sought by VCAT or court order rather than a unanimous resolution, there will always be competing interest to be satisfied. At present section 34D of the Subdivision Act 1988 sets out a broad statement regarding as to what VCAT must be satisfied with before it can make an order amending the plan.
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 ability of 75% of members to force the remaining members to be able to dispose of their lots should not be permitted. It should require unanimous consent unless it is by VCAT or court order. Lot owners should be able to maintain their property rights and retain the right to sell or otherwise dispose of their Lot. Only a party who acquires all Lots affected by the plan, whether on or off market, should be able to deal with the sale of the building in total. Government currently has a right of compulsory acquisition subject to the payment of fair compensation. The purpose for

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	such acquisition is usually to provide a community benefit such as road widening or enhancement to infrastructure. Where a private developer can acquire 75% of the building and require the remaining owners dispose of the interest this is providing a private, not a public, benefit. Such benefit should be with the landowner and not a party who can force disposal for their own future profit.
61 Under Option 21D, which voting thresholds and VCAT processes are preferable, and why?	Refer to my view above to question 60.
62 Under Option 21E, which sub-alternative is preferable, and why?	Refer to my view above to question 60.
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?	Refer to my view above to question 60.
64 To what extent do the options to reform the Subdivision Act in improve decision-making processes within owners corporations?	The matters in the Subdivision Act to the extent of being relevant to a current Owners Corporation should require a unanimous consent, VCAT or court order. The proposal to allow change by less than a unanimous consent, VCAT or court order should not be implemented. The right to acquire majority Lot holders other than by market transaction is inconsistent with the exercise of property rights by an owner.