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Consumer Property Law Review
Policy and Legislation Branch
Consumer Affairs Victoria
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Consumer Property Acts Review – Options for reform of the Owners Corporation Act 2006

Introduction

Consumer Affairs Victoria (CAV) is currently undertaking a review of the provisions under the *Owners Corporations Act 2006* that regulate owners corporations, specifically issues identified with the Owners Corporations Act, with the exception of the conduct of owners corporations managers which formed part of the first issues paper.

Since the *Act* commenced on 31 December 2007, various stakeholders have raised a number of conduct-related concerns. In response to these concerns, the Minister for Consumer Affairs has asked Consumer Affairs Victoria to review the provisions of the *Act* in relation to the following:

- Functions and powers of owners corporations
- Financial management of owners corporations
- Maintenance
- Meetings and decisions of owners corporations
- Committees
- Rights and duties of lot owners and occupiers
- Rules of the owners corporation
- Owners corporation records
- Dispute resolution
- Applications to VCAT
- Owners corporations in retirement villages



- Part 5 of the subdivision Act

The purpose of the review is to identify and develop options for consideration by the Minister for Consumer Affairs.

As part of this review, the Minister for Consumer Affairs has approved the release of an issues paper for public consultation. The purpose of the issues paper is to seek stakeholder feedback on the above issues, and if needed, the approaches to addressing the issues, including any regulatory controls.

Feedback from Issues Papers 1 and 2 has informed the development of this options paper. In particular, this paper responds to issues that were of the most importance to individuals and organisations that made submissions to the review. Options have not been developed where feedback has indicated that the legislation is working well or no legislative change is desired. The purpose of this paper is to outline potential legislative changes that could be made to the Owners Corporations Act, and to gather stakeholder views on those reform options.

Southbank Residents Association

Southbank Residents Association (SRA) is a community not-for-profit organisation, aiming to bring together and support the interests of all who live or work within Southbank, on matters such as planning and development, traffic issues, lack of public school, open space and other matters important to residents and visitors.

SRA is the convener of the Southbank Owners Corporation Network (SOCN), which is a forum for our building memberships to work together and discuss common areas of interest when it comes to apartment living in Southbank. SOCN covers some 19 buildings across roughly 4500 lot owners.

Southbank Residents Association welcomes this review and are glad for the opportunity to participate. The Act has been in effect for almost 9 years and SRA believes that this review will provide stakeholders with further clarity now and into the future.

This submission is made on behalf of the 19 buildings and roughly 4500 lot owners that Southbank Residents Association represents.

1. Regulation of Owners Corporations Managers

1.1 Licensing versus registration of owners corporation managers

1. *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.*

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

1.2 Maintaining the knowledge and skills of owners corporation managers

2. *A further issue for any registration or licensing scheme is ensuring that owners corporations 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.*

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

1.3 Unfair terms and termination of management contracts

3. *Some management contracts have terms that financially disadvantage owners corporations and make them difficult to terminate. These include automatic renewals, punitive early termination fees and other terms that are barriers to removing underperforming managers. For example, as management contracts can only be terminated at the end of the term or where there is a breach, termination by an owners corporation of the contract of an underperforming manager ‘without cause’, risks legal action.*

Option 3B – Simplify the termination of management contracts ‘without cause’.

1.4 Duties and obligations of owners corporation managers

4. *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.*

Stand-alone option for conflict of interest

Option 4A – Expand the obligations of owners corporation managers regarding procurement of goods and services, voting on owners corporation matters, and access to financial documents.

Alternative options for money held on trust

Option 4B – Restrict the pooling of unrelated owners corporations’ funds.

2. Responsibilities of developers, occupiers and committee members

2.1 Developers Obligations

5. *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. 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.*

Alternative options for developers' obligations

Option 5C – Extend and expand developers' obligations in line with the New South Wales approach.

Stand-alone option for building defects

Option 5D – Introduce specific obligations for developers regarding building defects.

2.2 Duties and rights of owners and occupiers

6. *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 lot 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.*

We were in favour of incorporating all the Stand-alone options

Option 6A – Clarify the right to inspect owners corporation records and align the basis for invalidating resolutions and rules.

Option 6B – Give owners corporations access to private lots to repair common property.

Option 6C – Prohibit lot owners from making alterations or repairs to common property.

Option 6D – Expand rule-making power to enable rules to be made, for pets, smoke drift, renovations and access to common property.

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

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

Option 6G – Make lot owners ultimately responsible for compliance by their tenants and guests with owners corporation rules.

2.3 Duties of committee members

7. *The existing duties of committee members do not specifically require them to act in their owners corporation's best interests.*

Option 7B – Reformulate the duties of committee members according to the Associations Incorporation Reform Act model.

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

8. *Owners corporations do not have specific functions or powers relating to community building, water rights or disposing of abandoned goods.*

We were in favour of incorporating all Stand-alone options

Option 8A – Give owners corporations a community building function.

Option 8B – Permit owners corporations to deal with water.

Option 8C – Permit owners corporations to dispose of abandoned goods on common property.

3. Decision-making within owners corporations

3.1 Voting thresholds and the use of proxies

9. *The problems associated with proxy farming, committee proxies, contractual voting restrictions and inactive owners corporations need to be addressed.*

Option 9A – Restrict proxy farming and committee proxies, and prohibit voting limitations in sale contracts.

Option 9C – Treat unopposed special resolutions as passed or as interim resolutions.

3.2 Committee size and processes

10. *The current maximum size of committees is too large for optimal decision-making and the process for arranging committee ballots is unclear.*

Option 10B – Permit the chair or secretary of the committee to arrange a ballot.

4. Dispute resolution and legal proceedings

4.1 Internal dispute resolution process

11. *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. Model Rule 6 (Dispute resolution) does not provide for certain things that would facilitate dispute resolution.*

We were in favour of incorporating all Stand-alone options

Option 11A – Exempt owners corporations from the need to engage the internal dispute resolution process for matters they initiate.

Option 11B – Revise Model Rule 6 (Dispute Resolution).

4.2 Civil penalties for breaches of owners corporations rules

12. *The maximum civil penalty that VCAT can impose for a breach of an owners corporation's rules of \$250 is inadequate to deter breaches, and 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.*

Stand-alone option for the amount of civil penalties

Option 12A – Increase the maximum civil penalty to \$1,100.

We felt that penalty units would be more appropriate to inflation proof the penalty

Alternative options for the payment of civil penalties

Option 12C – Retain VCAT’s power to impose penalties but allow owners corporations to retain penalties.

4.3 Initiating legal proceedings

13. *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.*

Option 13C – Apply different thresholds for actions in different Courts.

5. Differential regulation of different-sized owners corporations

14. *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.*

Option 14A – Introduce three new tiers of owners corporations.

We further felt that a contingency fund is unnecessary owing to an already established budget and maintenance fund.

6. Finances, insurance and maintenance

6.1 Defaulting lot owners

15. *The current process for recovering unpaid fees from defaulting lot owners is not cost-efficient and imposes inequitable burdens on other lot owners.*

Stand-alone options for debt recovery

Option 15B – Permit owners corporations to adopt payment plans in ‘hardship’ cases.

Option 15C – Permit owners corporations to recover pre-litigation debt collection costs from lot owners.

Option 15D – Permit VCAT to make default judgements.

Alternative options for litigation costs

Option 15F – Empower VCAT and courts to award all reasonable costs.

6.2 Insurance

16. *There are a range of issues relating to the insurance obligations of owners corporations. However, it was unclear from submissions 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 to allow owners corporations to impose a range of levies relating to insurance issues.*

Option 16B – Option 16A plus allowing the owners corporations to impose a range of levies relating to insurance issues.

6.3 Maintenance plans and maintenance funds

17. The existing requirements for maintenance plans and maintenance funds are inadequate to address maintenance requirements, particularly in apartment buildings with extensive infrastructure.

Option 17A – Introduce new thresholds for mandatory maintenance plans and funds.

Option 17B – Require mandatory funding of mandatory maintenance funds.

We have strong opposition to Option 17C

6.4 Increased expenditure arising from lot use

18. *Increased costs to owners corporations arising from particular uses of lots that are not factored into their lot liability cannot be recovered and must be shared by all lot owners.*

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

Question 52: Industry advice, benchmarks and consultation.

7. Part 5 of the Subdivision Act

7.1 Common seals

19. *The requirement for owners corporation to execute contracts and other official documents with a common seal no longer performs a meaningful function.*

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

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

20. *The current process for setting initial lot liability and entitlement does not ensure fairness and the current process for changing lot liability and entitlement requires some improvement.*

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

Stand-alone option for changing lot liability

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

7.3 Sale and redevelopment of apartment buildings

21. *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.*

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



Conclusion

A major point that our members were unanimous on was the desire for an industry ombudsman where a number of these issues could be addressed before legal action.

Thanks for the opportunity to make a submission on this review and we look forward to the next phase of the process.

A handwritten signature in black ink, appearing to read "Tony Penna", with a long horizontal stroke extending to the right.

Tony Penna
President
Southbank Residents Association