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Owners Corporations Amendment Bill- May 2019

I have not provided comments on clauses as listed in the Explanatory Memorandum where I am in substantial agreement with the recommendations.

Clause 18- maintenance plans and funds. Whilst a tier 2, 3 or 4 owners corporation may not a have an approved maintenance plan it may be prudent for them to have a maintenance fund for future planned or unplanned works. I would like to see provision clarifying that a tier 2, 3 or 4 owners corporation may have a maintenance fund without an approved maintenance plan. Such a fund could be limited in value to 5 times the approved annual administration budget if there were concerns that the maintenance fund should not hold excessive funds without an approved maintenance plan. Whilst these funds can be held in the administration fund owners often look at the bank balance and skimp on their levy payments believing that they do not need to cover the annual budgeted costs. Where the funds are in a maintenance fund there are two separate discussions and two separate levies.

Clause 26- I approve the recommendations made. In addition there is the situation where a common service terminates in a lot with that service continuing to another lot. Section 47 of the Act makes it clear that where a service only services a single lot it is a lot owners responsibility to maintain that service. Section 47(2) gives the owner the right to repair such a service if it is impractical for the lot owner to do so. It needs to be clear that the owners corporation has a right of entry to a lot in such circumstances, that is to repair a service to a single lot (not common property) where requested to do so by a lot owner.

Clause 29- tier 3 owners corporation should also be required to take out reinstatement and replacement insurance unless a unanimous or special resolution is passed. If the members, by normal resolution, agree that the owners corporation does not need this insurance then whilst an individual lot owner may take out insurance for their lot they will suffer significant financial penalty in the event of an incident where multiple non-insured buildings are destroyed and their owners can't reinstate them or clean up the site. To allow the decision as to whether the owners corporation takes out insurance to be governed by a normal resolution also raises the issue of an interim decision being made by a relatively low number of owners. By requiring a unanimous or special resolution ensures that the decision for the owners corporation not to take out insurance is

supported by a majority of the owners. This would be similar to clause 31 (4) which appears to only apply to plans of subdivision that contain a multi-level building.

Clause 31 (4) this appears to only apply to plans of subdivision containing a multi-level building. It should apply to all tier 2 owners corporations as well.

Clause 40 Section 89D (1) (a) of the Act. Limiting a person to only vote as a proxy to a single lot owners where there are 20 or less occupiable lots is overly restrictive. For a tier 2 or 3 owners corporation that has no real issues owners will often give a proxy to a chairman or a manager. Where a person holds multiple proxies and a resolution would not be passed without those proxies it could be deemed an interim resolution. A manager or chairman who is trusted with a proxy should be able to record via vote that they are speaking on behalf of multiple owners. Why should this be available to a large OC but not a small one? Would this also apply to a directed proxy?

Clause 55 are the rules required to be registered as special rules of the owners corporation? How can rules that have to be registered anticipate the modifications to units that a lot owner may seek? Can there be temporary rules that do not need to be registered that apply for the period of works, such as limiting working hours especially where noisy.

Other comments:

1. Costs incurred in the recovery of unpaid fees. Whilst clause 67 provides VCAT with authority to make orders regarding the recovery of reasonable costs incurred in recovering unpaid amount from lot owners, it does not provide the owners corporation the right to invoice reasonable recovery costs. This would need to be included in Section 23 or 24 of the Act. We are seeing an increase in the number of lot owners who don't pay fees until they are served a notice of a VCAT hearing. They then pay the outstanding fees. As the cost of recovery is normally only $500 or so it does not warrant taking the lot owner to VCAT for a ruling on whether the lot owner in default should be held accountable for such fees, due to the additional costs that would be incurred by the owners corporation. Further if the owners corporation is not permitted to invoice for the recovery on costs incurred (which are subsequently not paid by the lot owner) there is no dispute so an application cannot be made to VCAT for the resolution of a dispute. Owners corporations must be given the right to invoice for costs incurred in the recovery of fees at least for annual administration or maintenance levies. Liability for costs should be with the defaulting lot owner rather than the owners corporation at least for unpaid annual administration and maintenance fees. If necessary limit recovery of costs that can be invoiced to 50% of the outstanding amount or 50% of the total (administration plus maintenance) annual levy, whichever is less, unless otherwise ordered by VCAT.