



10 May 2019

Owners Corporations and Other Acts Amendment Bill Exposure Draft
Policy and Corporate Services
Consumer Affairs Victoria
GPO Box 123
Melbourne, VIC, 3001

By email: cav.consultations@justice.vic.gov.au

CSV Submission to Owners Corporations and Other Acts Amendment Bill

1. BACKGROUND:

Consulting Surveyors Victoria (CSV) currently represents 115 member firms that have as principals or employees the vast majority of Licensed Surveyors that produce, lodge for certification and manage the plans of subdivision that create the more than 30,000 new parcel titles (including both land and building parcels) that come into existence in Victoria each year. Our members' clients range from the largest of national and international development companies through to a 'mum and dad' individual 'developer', undertaking a once in a lifetime dual occupancy development of their family home.

Our members are the originators of plans of subdivision that create subdivisions involving owners corporations, act as advisors to individual property owners and developers, large and small, whilst liaising closely with Land Use Victoria on an on-going basis to maintain and enhance the quality and usability of such plans of subdivision. Our members also interact with the public, owners corporation managers, solicitors, estate agents and conveyancers throughout the state on a regular basis in relation to title dealings, subdivision, redevelopment of existing plans and owners corporation management. On that basis the Association's members have a distinct interest in a number of particular aspects of the *Owners Corporations and Other Acts Amendment Bill*.

We also note that the *Subdivision Act 1988* covers every type of subdivision in Victoria and that Part 5 of that Act needs to be considered in the context of the full Act and all Regulations associated with the Act, not just in isolation. Additionally the context that all types of owners corporation subdivisions, ranging from some dual occupancy two lot subdivisions, through unit developments of 3 -100+ lots, low rise apartments, apartment towers, complex mixed use developments, vertical communities, vacant lot developments incorporating shared facilities (such as recreational complexes and golf courses) and even rural subdivision situations, fall within Part 5 requires consideration in evaluation of potential impacts of legislative change. Section 37 of the *Subdivision Act 1988*, dealing with Staged Subdivisions, is one section of the Act which is of particular relevance to efficient subdivision of some developments involving owners corporations.

We believe that surveyors strive to ensure a good outcome in their subdivisions, whether of simple or complex nature, and see it as their professional duty to lead the Plan of Subdivision preparation which, for complex projects, requires input from all stakeholders – i.e. as Licensed Surveyors they co-ordinate and lead as the subdivision experts. The motivation to co-ordinate and lead coming from the desire to ensure good future operation of the structure created in the plans of subdivision for the benefit of the eventual individual property owners, the cadastre, their clients and the community.



2. GENERAL COMMENTS:

As an organisation Consulting Surveyors Victoria will generally limit the comments in this submission to matters within the Bill that directly relate to our members' areas of expertise and experience. As most of the proposed amendments to the *Owners Corporation Act 2006* relate to the management and operation of owners corporation, we only address a small number of those changes, but provide a more comprehensive commentary in relation to the proposed changes to the *Subdivision Act 1988*.

We believe that it is essential to maintain a degree of simplicity in relation to the setting of lot entitlement and lot liability for the majority of owners corporation subdivisions, but that any prescriptive principles must be workable and adaptable for more complex situations. As outlined below we have some significant concerns in this regard with the proposals outlined in the exposure draft.

3. SPECIFIC RESPONSES:

3.1 Amendments to the Owners Corporation Act 2006

3.1.1 New section 7 inserted

7 The four tiers of owners corporation

(1) For the purposes of this Act, an owners corporation falls within one of 4 tiers as specified in this section.

(2) A tier one owners corporation is an owners corporation that consists of 51 or more occupiable lots and is not a services only owners corporation.

(3) A tier two owners corporation is an owners corporation that consists of 10 to 50 occupiable lots and is not a services only owners corporation.

(4) A tier three owners corporation is an owners corporation that consists of 3 to 9 occupiable lots and is not a services only corporation.

(5) A tier four owners corporation is—

(a) an owners corporation for a 2-lot subdivision; or

(b) a services only owners corporation.

(6) If an owners corporation consists solely of non-occupiable lots, the tier into which the owners corporation falls is to be determined in accordance with subsections (2) to (5) as if a reference in those subsections to an occupiable lot were a reference to a non-occupiable lot.

CSV supports the introduction of the tier concept for owners corporations as beneficial to the operational management of owners corporations, but believes that the proposed four tiers fail to recognise complex multi-use developments that now occur, which can comprise a vertical community, equal in size and complexity to a traditional suburb. We believe there should be a fifth tier of owners corporation for such developments, which would not be necessarily based on number of occupiable lots.

3.1.2 New Section 67 (m) inserted

67 What documents must be provided at the first meeting?

(1) At the first meeting of the owners corporation the applicant for registration of the plan of subdivision must provide all of the following for the purposes of the owners corporation—

(a) the owners corporation register;

(-) ———

(m) copies of any specifications, reports, certificates, permits, notices or orders in relation to the plan of subdivision.

CSV believes that this is too broad a requirement and potentially covers all documentation related to the whole subdivision process and should be amended to: *m) copies of any specifications, reports, certificates, permits, notices or orders in relation to the plan of subdivision that will affect the management of the owners corporation*

in a similar manner to existing section 67 g) any contracts, leases and licences **binding on or benefiting the owners corporation;**

3.2 Amendments to Subdivision Act 1988

3.2.1 New section 27EA inserted

“27EA Initial owner to engage surveyor

(1) For the purposes of preparing a plan under this Part, an initial owner must engage a licensed surveyor to set out the initial allocation of lot liability and lot entitlement in the plan.

(2) Subsection (1) does not apply to a tier four owners corporation within the meaning of section 7(5)(a) of the Owners Corporations Act 2006.”

CSV supports this proposed amendment as all plans of subdivision are prepared by Licensed Surveyors and the current practice is, in almost every instance, that the Entitlement and Liability schedules are prepared as part of the plan by the Licensed Surveyor. To enhance surveyors knowledge of owners corporation management issues related to lot entitlement and liability, CSV would work with relevant stakeholders such as the Strata Community Association and Consumer Affairs Victoria to develop documentation to support appropriate implementation of this proposal.

CSV supports the exclusion of tier four (and potentially fifth tier) owners corporations under subsection (2), as we recognise that the determination of Entitlements and Liabilities for large multi -use complex projects benefits from consultation with other relevant professionals such as Owners Corporation Managers and solicitors.

3.2.2 Plan must specify lot entitlement and lot liability

(1) For section 27F(1) of the Subdivision Act 1988 substitute –

(1) A plan providing for the creation of an owners corporation or for the merger of owners corporations must specify-

a. Details of lot entitlement and lot liability; and

b. How the lot entitlement and lot liability is allocated in accordance with subsection (4)

CSV supports the thrust of this amendment, but we believe there will need to be liaison between relevant stakeholders, most notably, the Subdivision Branch of Land Use Victoria and surveyors prior to the implementation of part *b*.

3.2.3 New section 27F (4) inserted

(4) For the purposes of this section-

(a) Lot liability in the plan must be allocated equally between the lots unless the following applies-

- (i) *If there is a substantial difference in size between the lots-lots liability must be allocated on the basis of the size of the lot and the proportion that size bears to the total size area of the lots;*
- (ii) *If different lots have a bearing on the consumption of common utilities or the cost of maintaining the common property-lot liability must be allocated on the basis of the size of the lot and level of use by that lot of the common utilities and the common property;*
- (iii) *If the number of occupiers in each lot has a greater bearing on the consumption of the common utilities or the cost of maintaining the common property than the size of the lot-lot liability is to be allocated on the basis of the number of bedrooms in the lot; and*

(b) *Lot entitlement in the plan must be allocated on the basis of the market value of the lot and the proportion that value bears to the total market value of the lots at the time that the plan is registered.*

CSV acknowledges that the current lack of direction within the Subdivision Act for the determination or calculation of lot entitlements and/or liabilities is a short coming. Whilst the concept of providing applicable standards and guiding principles is generally supported, we have concerns that providing a limited number of very prescriptive 'must' directions will not cater for the complexity and variety of owners corporation developments that currently occur.

CSV believes that for the determination of **lot liability** the basic concepts outlined in sections 4 (a) (i), (ii) and (iii) above are generally practical and workable relative to the majority of small to medium sized residential developments that occur throughout Victoria. (We note that the application of section 4 (iii) will be restricted to constructed residential lots only where the number of bedrooms is known, and this could not be applied in multi-use or land only developments). However, the increasing complexity of developments means that in many cases these proposed simple principles may not be adequate to provide the best possible outcomes in many instances.

We believe the fully prescriptive nature of sections 4 (a) (i), (ii) and (iii) as the only alternatives will significantly restrict determination of appropriate entitlements and liabilities for complex vertical community developments in particular, where there are multiple significant mixed-use components including residential, retail and commercial/office lots, as well as diverse mixed uses such as community facilities, hotel, serviced apartment, affordable housing, education facilities. Car stackers are an example of new facilities/technology being incorporated into such developments by necessity and requiring a different approach to determination of lot entitlement and liability. Such developments, by their nature require complex, multi-layered owners corporation structures to operate efficiently in the long term.

We suggest that there should be an exemption for such developments (which would be fifth tier owners corporations under our suggestion in 3.1.1 above), requiring the consideration of the principles applicable under 67 (4) (a) (i), (ii) and (iii), but allowing more flexibility in the determination of equitable lot liability for such developments.

CSV also believes that 'lot value' can be an appropriate determinant for lot liability in some instances, particularly when considering some high rise residential developments as a sizeable community, much as municipal rates are determined on a land value basis and believe this should also be considered as an additional alternative.



CSV believes that (4) (b) above relating to the determination of **lot entitlement** on the basis of market value of the lot relative to the overall value of all lots in the plan is basically a sound concept, particularly in relation to most small to medium residential developments. **However, it is totally impractical and unworkable to link this to 'at the time the plan is registered'.**

Plans of subdivision and the accompanying owners corporation documentation (including lot entitlement and liability schedules) for all large vertical community developments are initially prepared and contracts entered into at least two years or more before the plan reaches the registration stage. Due to changing market conditions during this period we acknowledge that there can sometimes be significant changes in market value, but we believe that such changes are generally relative for values of the lots within the development, unless there has been a significant change to the development layout. Accordingly, we believe this wording should be deleted. Alternatively, if it is considered vital for there to be a specific time point for the market value to be applied, we believe it should be 'at the time of preparation of the plan'.

The practicality of application of this proposed section to subdivisions staged under Section 37 of the *Subdivision Act 1988*, whether this be a large broadacre subdivision incorporating community facilities or a complex vertical community development is also questioned. Such subdivisions generally occur over a period of many years by adding new lots to an existing plan. It is essential to ensure that lots in early (or later) stages are not disadvantaged because of movements in the market over time. For example, it is not appropriate that a land lot or an apartment in stage 1 of a development to have a significantly different entitlement to practically the same lot or apartment in a later stage due solely to market value variations over a number of years. It is inequitable that there not be the opportunity to link overall values to a base valuation or benchmark applicable over the full timeline of development.

3.2.4 How can lot entitlement and liability be altered?

For section 33(1) of the Subdivision Act 1988 substitute-

(1) If there is a unanimous resolution of the members, the owners corporation must apply to the Registrar to alter the lot entitlement or lot liability.

(1A) An application under subsection (1) must be made-

(a) In the approved form; and

(b) Within 60 days of the passage of the unanimous resolution."

"(2) In the making any alteration to the lot entitlement or lot liability, the owners corporation must act in accordance with section 27F(4)."

CSV supports this proposed new section, subject to our concerns in relation to proposed section 27F(4).

4. CONCLUSION:

CSV believes that, apart from the significant areas of concern raised in this submission, that the proposed amendments to the Owners Corporation Act 2006 and the Subdivision Act 1988 are generally positive steps and will assist in the effective operation and management of a large percentage of the Owners Corporations in Victoria. We believe that the concern matters raised by this association need to be fully evaluated and acted upon, prior to the progressing of the bill.

CSV would be happy to meet and discuss this submission and the issues raised therein.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Michael Wilson'.

Michael Wilson
President

