

10 May 2019

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

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

Dear Madam/Sir

OWNERS CORPORATIONS AND OTHER ACTS AMENDMENT BILL - EXPOSURE DRAFT CONSULTATION

Thank you for the opportunity to comment on the exposure drafts of amendments to the *Owners Corporations Act 2006*, the *Retirement Villages Act 1986*, and Part 5 of the *Subdivision Act 1988* (the **Amendment Bill**) resulting from the Consumer Property Law Review (the **Review**).

Consumer Action Law Centre provided submissions to the various consultation processes that formed part of the Review, focusing on a number of specific issues. These included:

- regulation of non-payment of owners corporation levies and hardship;
- the application of unfair contract term laws to owners corporation management contracts; and
- the regulation of owners corporation that are also retirement villages

Non-payment of levies and hardship

We oppose proposed clause 67 of the Amendment Bill which allows the Victorian Civil & Administrative Tribunal (**VCAT**) to order a lot a lot owner to pay to the owners corporation reasonable costs incurred by the owners corporation in recovering an unpaid amount from the lot other (other than costs in the proceeding).

This provision would allow an owners corporation to recover pre-litigation debt collection costs from defaulting lot owners. It contradicts existing laws, particularly section 52 of the *Australian Consumer Law & Fair Trading Act 2012* (Vic), which provides that enforcement expenses are not recoverable for collection of (non-credit contract) consumer debts even where a contract purports to make them recoverable. Given owners corporation levies are similar to other consumer debts in that they are of personal and domestic character, we consider this inconsistency to be undesirable.

Furthermore, if owners corporation are able to recover debt collection costs in the way proposed by this clause, they will have an incentive to pursue costly debt collection above a more responsible approach to collection, which might involve hardship assistance.

We are also disappointed with clause 82(2) of the Amendment Bill which provides for a new type of rule that an owners corporation may make with respect to the payment of fees by instalments by lot owners in financial difficulty. While owners corporation of course should be empowered to make such rules, this approach falls a long way short of what the community expects: that owners corporation be *required* to offer payment assistance, including through payment of fees by instalments, to lot owners in financial difficulty. We consider it unlikely that many owners corporations will make such rules without being required to do so.

Unfair contract terms

We strongly support clauses 65 and 69 of the Amendment Bill which allow VCAT to make an order that a owners corporation management contract is unfair, considering the unfair contract term provisions of the Australian Consumer Law as a reference point. This is a long overdue step that should eliminate unfairness in provisions of owners corporation management contracts.

We also support the clause 49 of the Amendment Bill which seeks to reduce the imbalance between owners corporation managers and lot owners when it comes to certain contract terms.

Retirement villages

We support clause 83 of the Amendment Bill which will amend the Retirement Villages Act so that residents of a retirement village may elect a residents committee to represent the interests of residents of the village, whether or not there is also an owners corporation associated with the village. This will ensure that residents interests are not diminished in situations where the residents may not have controlling interest in an owners corporation.

We also generally supportive of clause 58 which inserts a new Part 8A into the Owners Corporation Act, in particular new section 143B which provides that removes the entitlement of retirement village owners from voting on specified fee-related resolutions and new section 143H which seeks to separate owners corporation meetings from retirement village meetings. We consider, however, that this part should be considered further in the context of the upcoming review of the Retirement Village Act.

Please contact us on 03 9670 5088 or at info@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,
CONSUMER ACTION LAW CENTRE



Gerard Brody | Chief Executive Officer