



**Dixon Kestles & Co Pty Ltd**

ABN 65 005 131 742

Licensed Estate Agents, Auctioneers,  
Property Consultants & Owners Corporations

Member REIV, OCV, FIABCI

161 Park Street, South Melbourne

Victoria 3205 Australia

T: (03) 9690 3488 F: (03) 9699 4581

E: [mail@dixonkestles.com.au](mailto:mail@dixonkestles.com.au)

[www.dixonkestles.com.au](http://www.dixonkestles.com.au)

Directors:

J C M Pratt, A C Pratt, S T Regan

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Owners Corporations & Other Acts Amendment Bill Exposure Draft  
Policy & Corporate Services  
Consumer Affairs Victoria  
P O Box 123  
MELBOURNE VIC 3001

Via email to: [cav.consultations@justice.vic.gov.au](mailto:cav.consultations@justice.vic.gov.au)

Dear Sir/Madam

**RE: Owners Corporations & Other Acts Amendment Bill Exposure Draft**

We act as managers of owners corporations within Victoria, representing some 160 owners corporation properties and 5,000 individual lots with management experience spanning over 40 years in the community ownership style property market through its various forms and transitions.

Our comments and feedback are presented for your consideration based on a practical and realistic day to day involvement in the management of these properties, dealing with the owners, occupiers and all interested parties in the property environment and coming from an understanding of their needs and requirements in a fair and equitable environment.

Additionally, as individuals some of us have ownership and reside at personal levels in owners corporation properties, experiencing and understanding the sector from a variety of angles.

Specifically to the Amendment Draft we provide feedback on the following Sections of the proposed amendments:

### **7 The four tiers of owners corporation**

We accept and understand the concept and purpose of this division of types of properties however we would note that there are many property configurations that can have a significant number of individual owners of lots that are for example car spaces or storage facilities. In some cases up to 300 lots within an Owners Corporation and the possibility of 300 individual owners of those lots and one or two commercial/retail lots included (often the lot that the business service operates from).

A property example such as this would fall to a lower tier, possibly tier 3 or 4, not being caught within the definition of 7(6) which reflects there being solely non-occupiable lots. By their nature and physical structure they would be large and significant value properties however the tier category would preclude them from certain provisions and requirements contained within other parts of the Act that would be applicable for the protection of the asset and the owners.

## **10 Execution of documents by owners corporation**

In Section 10 (1) the use of the phrase “execute or do anything necessary or convenient to carry out its functions, powers, rights and obligations.” would leave the execution open to interpretation and potential misuse by parties. “Convenient” without justification and clarity could lead to dispute within an owners corporation.

## **17A Water on common property**

Our understanding of this would be that the intent is to enable water catchment to have an ownership structure to the owners corporation.

Could this not also then create an exposure to the owners corporation that any water falling onto the common property, becoming the property of the owners corporation then attach a responsibility to that ownership in the event the water flowed and caused damage of injury?

## **18 Power to commence legal proceeding**

Sections 18 (1) and (2) appear to read in an ambiguous manner and lack clarity.

As presented at (1) refers to authorization by special resolution subject to (2) where actions can be commenced within the Magistrates' Court or VCAT or a corresponding court meaning that to read it you refer backwards and approach it with an assumption that the action mentioned in (1) is referring to action in a higher court than Magistrates or VCAT such as Supreme Court. It is however not clearly stated and requires clarification.

We note that six persons were asked to read the clause independently and each came back noting it was ambiguous in its current form and did not convey a clear understanding of the voting level required.

## **Division 5 – The common seal**

The Division contemplates either having or not having a common seal and then the usage or execution. Noting that an owners corporation can now function without a common seal however all existing owners corporation should hold one by requirement of the current Act, it would be prudent and practical to allow that an owners corporation can, by ordinary resolution, determine that the common seal is no longer required and is able to be destroyed.

## **23 Owners Corporation may level annual fees**

Section 3(A) The owners corporation may levy an additional annual fee to a lot owner subject to the provisions outlined.

This is a positive provision and we support it in concept however in real terms will be open to interpretation without some parameters or definition to assist an owners corporation determining what additional cost is attributable to a lot owner. A basis of calculation or procedural requirement for the additional charge is required to ensure that the owner being levied the additional charge is not unfairly charged, especially noting that the charge would be approved through the Annual General Meeting voting process and they would be able to be outvoted, leading to further dispute probability.

### **23A Owners Corporation may levy fees in relation to insurance**

(3)(a) an excess amount or an “increased premium payable on an insurance claim”

The term referring to an increased premium on a claim lacks clarity. Increased premiums may result overall from a claim or claim history but there is not a situation where there is an increased premium payable on an insurance claim.

### **24 Extraordinary fees and charges**

(2B) The owners corporation may levy special fees and charges on a lot owner relating to repairs, maintenance and other works arising from the particular use of a lot by the lot owner.

This is a positive provision and we support it in concept however in real terms will be open to interpretation without some parameters or definition to assist an owners corporation determining what additional cost is attributable to a lot owner as a special fee. A basis of calculation or procedural requirement for the additional charge is required to ensure that the owner being levied the additional fee is not unfairly charged.

24 (2) also needs notation to allow for (2B).

### **36 Maintenance Plan**

(1) “must prepare and approve”.

How will this be enforced and what penalties apply for an Owners Corporation that does not comply?

### **65 Valuation of buildings**

The requirement, while positive, will be resisted by many Owners Corporation, particularly Tier 3 where the impact of cost could be considered significant by the lot owners.

### **68 Obligations of initial owner**

(4A) (b) where an initial owner or their associate must not vote on any resolution of the owners corporation that relates to a defect in or on a building on the plan of subdivision requires the additional specification of how the quorum and voting numbers would be affected by such exclusion.

If it is to be assumed that their vote relates to their ownership or one or more lots, as they are ineligible to vote, will the vote and or lot entitlement for the lots under their ownership be deducted from the total votes and entitlement points? If it was to remain, it could effect the ability of the remaining members of an owners corporation being able to achieve the required quorum and voting level for resolutions to proceed on defects. An ineligible vote, being not dissimilar to a no vote or abstaining in real terms.

### **77 Quorum for a general meeting**

The definition does not allow for the situation of a owners corporation consisting of solely non-occupiable lots, such as a storage facility.

## **89D Restriction on number of lot owners on behalf of whom a proxy may vote on a resolution**

We understand the intent and intention to be for protection and avoidance of the situation of proxy farming however (1) (a) and (b) would severely restrict the practical operation of a number of owners corporations where it is often, frequently and legitimately the case that more than one member wants to appoint a particular person or other member to be the proxy for them.

In this situation the trusted person is restricted to only acting for either one other person (or less than 5% of the lot owners where there are 20 occupiable lots). The inability of these persons to accept the proxy should they already hold one for another member and the member subsequently needing to source an alternate person will result in quorums not being able to be achieved, voting levels not being able to be achieved.

The trusted person, either another owner or can at times be a manager of an owners corporation, an agent that acts for the owners of several lots within an owners corporation. They could be acting on the specific instruction of the member in directed voting and this can regularly be the case as members do not know other members or, who they can trust with their vote, particularly relevant for absentee owners.

The person, when it is a manager for example, is restricted through other sections from voting on matters that effect or benefit themselves so there is a safeguard in place with those provisions.

In the event that a member wishes to provide a proxy but the recipient of the proxy already holds proxies and can therefore not accept this one, the member seeking to participate through provision of the proxy is being denied the opportunity of their vote being included in the decisions of the Owners Corporation unless they can source an alternate person.

Thank you for your consideration and the opportunity of providing this feedback.

Yours faithfully,

**DIXON KESTLES & CO PTY LTD**



**PETER DAVIES**  
**Associate Director**  
**Owners Corporations**



**JOHN PRATT**  
**Director**



**PERNILLE CAVANOUGH**  
**Director**