

8th May 2019

Owners Corporation and other Acts Amendment Bill Exposure Draft
Policy and Corporate Services
Consumer Affairs Victoria
GPO Box 123
MELBOURNE 3001

cav.consultations@justice.vic.gov.au

To whom it may concern,

**INSTITUTION OF SURVEYORS (ISV) SUBMISSION
OWNERS CORPORATION AND OTHER ACTS AMENDMENTS BILL
EXPOSURE DRAFT CONSULTATION**

The ISV thanks Consumer Affairs Victoria for the opportunity to provide a submission in relation to the Owners Corporation and Other Acts Amendments Bill.

The ISV is the peak professional association for land surveyors in Victoria. Since 1874, the ISV has worked with government to improve and safeguard the property boundary system which underpins Victoria's cadastral based, land administration economy.

The ISV represents the largest number of individual Licensed Surveyors in Victoria and has two-member nominees on the Surveyors Registration Board of Victoria. It also provides government, academia and the community with the collective opinion of the surveying profession.

Licensed Surveyors play an essential role, in partnership with Government (via the Registrar of Titles and Surveyor-General), to maintain the land boundary framework upon which the subdivision of land, establishment of Owners Corporations, and registration of title dealings are based.

The work of Licensed Surveyors involves the establishment of Owners Corporations. Licensed Surveyors are required to exercise their professional judgement in determining fair and equitable Owner Corporation structures for the ongoing benefit of the communities those Owners Corporation serve. This makes Licensed Surveyors key stakeholders in the proposed amendments to legislation.

This submission is limited to the proposed amendments to the Subdivision Act 1988, being the key piece of legislation of those under review which Licensed Surveyors and members of the ISV work mostly with.

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.***

The Subdivision Act 1988 requires that plans of subdivision are prepared by Licensed Surveyors. It then follows that the Owners Corporation structure and entitlement and liability schedules are also prepared by Licensed Surveyors, as these are part of the Plan of Subdivision. Therefore, the proposed inclusion of Section 27EA would appear unnecessary.

The ISV would like clarification on the reasoning for the proposed inclusion of Section 27EA. Further to this the ISV also requests clarification on the intention of the term “set out”.

The ISV would have concerns if the intention of Section 27EA is that Licensed Surveyors “must” determine the initial allocation of lot liability and lot entitlement in the plan. Whilst Licensed Surveyors prepare the initial allocation of lot liability and lot entitlement in the plan, the initial allocation of lot liability and lot entitlement is often determined in collaboration with other relevant professionals such as Lawyers and Owners Corporation Managers, and so not the sole responsibility of Licensed Surveyors. The collaboration with other relevant professionals is becoming more common as Owners Corporation developments become increasingly more diverse in use and complexity.

2. Substitute Section 27F(1)

- (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)*

The ISV would like clarification on the proposed method to specify on a plan of subdivision how the lot entitlement and lot liability is allocated in accordance with subsection (4). There is currently no provision on the plan of subdivision to note such detail. If the intention of Section 27F(1) is for the plan of subdivision to demonstrate accordance with subsection (4) by specifying the relevant sub-clause of subsection (4), then the ISV has concerns which are discussed further below.

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-lot 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.*

The ISV has serious concerns about the proposal to prescribe how entitlements and liabilities must be created. The proposed section 27F(4) appears to be drafted with emphasis on residential development. It is not adequate, nor does it appropriately contemplate developments of other uses, whether that be industrial, commercial, educational and mixed use, all of which can be governed by an Owners Corporation. The increasing complexity of Owners Corporation developments and the diversity of use demands flexibility and a broad approach in the methodology of allocating lot entitlement and lot liability.

The ISV recommends that the proposed section 27F(4) not be included in proposed amendments. However, if it is to be included then the ISV recommends that it be re-drafted along the following lines:

- (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 lot 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; or*
 - (ii) If different lots have a substantially different 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 level of use by that lot of the common utilities and the common property;*
 - (b) Lot entitlement in the plan must be allocated equally between the lots unless the following applies-*
 - (i) If there is a substantial difference in the market value of the lot and the proportion that value bears to the total market value of the lots in the plans of subdivision and lots that are members of the relevant Owners Corporation.*

4. Substitute Section 33(1)

- (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.*

The ISV has no concerns with the proposal.

5. Substitute Section 33(2) and 33(3)

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

The proposed amendments to Section 33 are consistent with the proposed Section 27F(4), the views of ISV are therefore subject to our comments above in relation to proposed Section 27F(4).

6. Substitute Section 34D(3)(c)

- (c) *the member has or the group of members have refused consent to the proposed action and—*
- (i) *the member owns or the group of members own more than half of the total lot entitlement; and*
 - (ii) *all other members of the owners corporation consent to the proposed action; and*
 - (iii) *the purpose for which the action is to be taken is likely to bring economic or social benefits to the subdivision as a whole greater than any economic or social disadvantages to the member or the group of members who did not consent to the action.*

The ISV requests clarification on the intention of the proposed amendments to Section 34D(3)(c). The current section allows VCAT to make an order where a member has refused consent to a proposed action, but more than half the members (the majority) consent to the proposed action. The proposed section appears to allow VCAT to make an order where a member has refused consent to a proposed action, but the majority of members have also refused consent to the proposed action.

This proposal needs to be carefully considered in the context of actions requiring unanimous resolution of the Owners Corporation, in particular the re-subdivision and disposal of common property. Such actions can adversely affect the lot owner's security of title, as well as the interest of any mortgagees. The ISV would have serious concerns if the path to unanimous resolution of the Owners Corporation is made easier for the minority of members in an Owners Corporation.

The ISV are prepared to provide any further information or consultations in regard to the content of this submission or any other relevant issues regarding the proposed Amendment Bill.

Should you have any queries please do not hesitate to contact the undersigned or Executive Officer Gary White.

Yours faithfully,



KELLIE DEAN
President ISV



THE INSTITUTION OF SURVEYORS VICTORIA

206/370 St Kilda Road, Melbourne VIC 3004

T (03) 9326 9227 | F (03) 9326 9216

E isv@isvic.org.au | W www.surveying.org.au