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Owners Corporations and Other Acts Amendment Bill Exposure Draft
Policy and Corporate Services
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Owners Corporations and Other Acts Amendment Bill – Exposure Draft Consultation

SUBMISSION – Strata Community Insurance Agencies Pty Ltd, 10 May 2019

About Strata Community Insurance

Strata Community Insurance is an independently owned strata and community title insurance specialist, underwriting on behalf of the Allianz Group, the world's largest property and casualty insurer. It is a business founded, owned and staffed by a group of Australia's most experienced strata insurance professionals, and designs and builds specialist insurance products and services for the strata and community title sector Australia-wide. Its directors have strata and community title insurance experience spanning four decades across six countries, including some of the world's most challenging markets – the United States of America, the United Kingdom and the Middle East – and are well positioned to offer credible input into this process.

Strata Community Insurance welcomes the opportunity to make a submission in response to Consumer Affairs Victoria's (**CAV**) Owners Corporations and Other Acts Amendment Bill Exposure Draft (**Bill**) consultation.

Approach to this submission

This submission discusses a selection of issues arising from the Bill. Relevant clauses within the Bill, any associated sections of the *Owners Corporations Act 2006* (Vic) (**OC Act**), and a brief description of the issues are identified in each respective heading.

Further information

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1. Reinstatement and replacement insurance (Bill clauses 5 and 29; OC Act ss7, 7A, 8, and 59)

The removal of requirements for collective building insurance for over 90% of owners corporations in Victoria is untenable. This dramatic and fundamental change has no apparent basis in stakeholder feedback or consultation findings arising from CAV's Consumer Property Law Review process. It has not been explained or justified by reference to any regulatory objectives, nor has it been subject to any form of regulatory impact analysis. It unnecessarily exposes individual lot owners in Victoria to unknown, and potentially unlimited, financial exposure to the full extent of their net wealth, and risks placing Victoria at odds with the approach to strata and community title insurance adopted in every other state and territory jurisdiction in Australia. These, and other arguments are explored in more detail below.

What is the change?

As discussed in the Explanatory Memorandum (**EM**), clause 29 of the Bill amends section 59(1) of the OC Act, which requires owners corporations to take out reinstatement and replacement insurance for all buildings on the common property.[1]

The amendment restricts the application of this provision to tier one owners corporations and tier two owners corporations only. That is, per the new section 7, to those owners corporations (excluding services only owners corporations) comprising 10 or more "occupiable lots" (as defined in section 3).

This draft amendment effectively removes the collective insurance requirement from over 90% of all owners corporations in Victoria.[2] In other words, if implemented in its current form, the amendment risks a scenario in which more than 9 in 10 owners corporations in Victoria may be uninsured, or uninsured, in respect of common property assets.

For the reasons outlined below, Strata Community Insurance does not support this draft amendment.

(a) *No basis in CAV consultation findings or stakeholder feedback*

CAV has indicated that the Bill "responds to issues raised by stakeholders during the Consumer Property Law Review".[3]

This is not the case with respect to the draft amendment affecting section 59 of the Act.

Rather, the proposed removal of a collective building insurance obligation from what will now be characterised as 'tier three' owners corporations has no apparent foundation in

[1] Owners Corporations and Other Acts Amendment Bill Exposure Draft Explanatory Memorandum, p.10.
[2] Currently, there are more than 166,000 owners corporations in Victoria – registered in respect of over 72,000 plans of subdivision – with 90.65% of those owners corporations consisting of 9 lots or less: Consumer Affairs Victoria: *Consumer Property Acts Review Issues Paper No. 2 – Owners Corporations* (**Issues Paper**), p.6.
[3] https://www.consumer.vic.gov.au/resources-and-tools/legislation/public-consultations-and-reviews/owners-corporations-and-other-acts-amendment-bill-exposure-draft-consultation.

consultation findings and stakeholder feedback published as part of CAV's Consumer Property Law Review.

CAV's Issues Paper[4] explicitly identified the following "Issues" in relation to insurance:

Issues

Types and level of insurance cover

Various issues have been raised about the type and level of mandatory insurance cover, including:

- whether the minimum level of public liability insurance for the common property ($10 million for any one claim) remains adequate
- whether valuations of the buildings should continue to be taken every five years, and what type of valuation should occur (for example, whether the first valuation of the building must be a 'full site valuation', or whether subsequent valuations can be indexed 'desk valuations'), and
- whether owners corporations should take out other types of insurance that are currently voluntary, for example: contents insurance for the common property; insurance for the performance of its functions; and insurance on behalf of its officers and committee members against liability for a breach of their duty to exercise due care and diligence, where the officers or members are personally liable (for example, where the officers or members have not acted in good faith).

Other issues

Other issues include whether the insurance provisions should take into account:

- situations where lot owners choose to take out their own reinstatement and replacement insurance for their lot or for their interest in the common property, and wish to 'opt out' of the policy taken out by the owners corporation, and avoid being levied for the latter
- lot owners whose use of their lot increases the insurance premium payable by the owners corporation. Currently, such owners cannot be levied a differential amount to cover the increase. However, under the New South Wales legislation, this can be done with the consent of the lot owner; and if the owners corporation believes the lot owner has refused consent unreasonably, it can apply to the tribunal for an order for a differential amount, and
- situations where a claim on an insurance policy by an owners corporation concerns work done to only one or some lots, or relates to the common property but is attributable to an individual lot owner or occupier, by allowing owners corporations to require the relevant owner or occupier to pay for the excess or increased premium.

Firstly, it is not clear which party(ies), *if any*, raised the abovementioned issues. The Issues Paper itself noted only that: "Many of the issues in this paper have been raised by stakeholders during preliminary consultation on the review."[5]

Secondly, the requirement for owners corporations to take out reinstatement and replacement insurance was not, in any case, identified as an "issue".

[4] Issues Paper, ibid, p.20.
[5] Ibid, p.3.

The only consultation questions asked, in respect to the abovementioned "issues" were the following:[6]

Questions

24 What are your views about the type and level of insurance cover that should be required?

25 Should lot owners be able to 'opt out' of the insurance policy taken out by the owners corporation when they take out their own insurance (and not, therefore, pay their portion of the owners corporation's policy)?

26 What are your views about lot owners' responsibilities where their actions (or inactions) result in increased insurance premiums or excesses payable by the owners corporation?

That is – by reference to the "issues" raised – the questions related to whether:

- Owners corporations should be required to take out other types of insurance that are currently voluntary;
- The minimum level of public liability insurance remained adequate;
- Individual owners should be able to "opt-out" of owners corporation reinstatement and replacement insurance; and
- Owners corporations should be permitted to charge differential levies to lot owners in certain circumstances, or be able to enforce payment by a particular lot owner of an excess or increased premium.

Whether reinstatement or replacement insurance should or should not be required for particular schemes – based on number of lots or otherwise – was simply not an "issue" that was raised, nor a consultation question that was posed.

Moreover, as the below extract demonstrates, the Options Paper[7] later released by CAV (in response to submissions received on the Issues Paper) confirmed that the only issues of relevance raised by stakeholders in relation to insurance included:

- Level of public liability insurance;
- Correction of existing legislative anomalies relating to subdivisions containing separate buildings; and
- Imposition of differential levies by owners corporations.

[6] Ibid, p.21.
[7] Consumer Affairs Victoria: *Consumer Property Law Review – Options for reform of the Owners Corporations Act 2006* (**Options Paper**), p.50.

6.2 Insurance

Issues

There are a range of issues relating to the insurance obligations of owners corporations. However, it was unclear from submissions whether only minimal changes are required - to increase the level of public liability insurance and correct anomalies concerning plans of subdivision that contain separate buildings - or whether more substantial changes are required to allow owners corporations to impose a range of levies relating to insurance issues.

Alternative options

- **Option 16A** – Increase the level of public liability insurance and correct anomalies concerning plans of subdivision that contain separate buildings.
- **Option 16B** – Option 16A plus allowing the owners corporations to impose a range of levies relating to insurance issues.

Despite the fact that requirements for reinstatement or replacement insurance were not raised by stakeholders during CAV's "preliminary consultations", were not the subject of any consultation questions asked in CAV's Issues Paper, and were ostensibly not raised by any stakeholders in response to CAV's Issues Paper, CAV's subsequent Options Paper *nevertheless proposed removing the collective insurance requirement from over 90% of all owners corporations in Victoria*.

Indeed, this removal was not even presented as an "Option", or made the subject of further consultation. Rather, it was presented as a foregone conclusion. Specifically, what was presented in the Options Paper were two alternative models:

(i) a three-tier classification system *in which tier three owners corporations had no compulsory building insurance*; or
(ii) (ii) a four-tier classification system *in which tier three and tier four owners corporations had no compulsory building insurance*.

The only further consultation questions then asked in the Options Paper[8] were:

37 Which option, and why, represents the most appropriate way to differentiate the level of regulation of owners corporations according to their size?

38 Is the size of owners corporations in each tier appropriate for the requirements imposed on them and, if not, what should be the size requirement for each tier?

(b) *Inconsistency with regulatory objectives*

The proposed changes to section 59 of the OC Act are incongruous with CAV's stated justifications for increased regulation and interference with individual lot owners' property rights, as described in the Options Paper. Specifically, the Options Paper provided (at p.5):

> "…*increased regulation of owners corporations, and interference in the property rights of lot owners, is argued to be justified on two grounds.*

[8] Options Paper, Ibid, p.50.

> *First, lot owners owe a duty to each other to maintain and insure the common property, and, because of the ability of each lot to affect the value and amenity of other lots, a duty to take reasonable account of that fact in the use and presentation of their lots.*
>
> *…Further, and particularly for owners corporations governing high-rise buildings, there is an interest in ensuring that the common property is maintained in a safe condition and supported by public liability insurance, so that members of the public, who enter the building as invitees, are protected*."

We would argue that the "*ability of each lot to affect the value and amenity of other lots,*" and the public interest in "*ensuring that the common property is maintained in a safe condition*" are both reasons for *mandating* collective building insurance, not *removing* such a requirement from over 90% of all owners corporations in Victoria.

Further in this regard, it is noted that the Options Paper (again at p.5) separated "issues that have been identified for reform" into eight separate areas, and that "Options presented to address the issues aim[ed] to… strengthen the insurance and maintenance obligations and powers of owners corporations."

It is impossible to reconcile a stated objective of "strengthening insurance obligations" with a subsequent administrative decision to *remove*, and thereby *weaken*, insurance obligations for over 90% of owners corporations in Victoria.

It is also worth noting that the EM provides no further guidance in respect to any possible regulatory objectives or rationale underpinning this monumental change.

(c) *Illogical and disproportionate response to issues identified*

Notwithstanding the discussion above at (b), the Options Paper (at p.45) appears to articulate what might be considered a justification for the proposed amendment:

> "*Due to their size, many Tier 3 owners corporations would be inactive. Therefore, it is not proposed to make building insurance mandatory but to give lot owners the option of individually insuring their own lot and their liability for the common property, if collective insurance by the owners corporation is unable to be achieved*."

That is – the *inactivity* of smaller owners corporations is ostensibly provided as a justification for removing collective building insurance requirements (other parts of the Options Paper further discussed problems of apathy and dysfunction within owners corporations and their committees). This is presumably based on reasoning that, owing to their inactivity, smaller owners corporations are in some cases unable to coordinate and arrange collective insurances.

Firstly, this response is entirely inconsistent with the *continuing requirement* for mandatory collective *public liability* insurance. It is logically inconsistent to, on the one hand, justify removal of a collective *building* insurance requirement on the basis of inactivity and dysfunction of smaller owners corporations, while on the other hand mandate ongoing requirements for collective *public liability* insurance, the taking out of which requires those *same owners corporations* to be active and functioning.

Secondly, it is important to note the qualifying words in the above extract from the Options Paper. To illustrate, the passage is reiterated here with emphasis added:

> "*Due to their size, many Tier 3 owners corporations would be inactive. Therefore, it is not proposed to make building insurance mandatory but to give lot owners* ***the option*** *of individually insuring their own lot and their liability for the common property,* ***if collective insurance by the owners corporation is unable to be achieved***."

The qualifying words are ambiguous, but imply that the intention underpinning the proposed changes was to allow lot owners the option of individually insuring in circumstances where collective insurance is unable to be achieved by their owners corporation on the basis they are dysfunctional or inactive.

The proposed legislative response – to remove collective insurance requirements from tier three schemes – is misguided and suboptimal at best, and is certainly a disproportionate response to the identified problem (inactivity) that is seeking to be addressed.

It is worth emphasising in this respect that the degree of activity or inactivity, or function or dysfunction of an owners corporation (including their committee), is irrelevant from an insurance perspective in that it does not affect the *nature of the risk* that is addressed by collective insurance arrangements. In other words, irrespective of whether or not the owners corporation is functional, their risk exposure and that of individual owners remains the same. That risk exposure is more appropriately managed through mandatory collective owners corporation insurance, than by optional individual insurance that may or may not be taken out by individual owners. Moreover, even in cases where *all* owners effected individual insurance, this would be insufficient to provide protection against their exposure to risk in their capacity as members of the owners corporation.

(d) *Risks associated with optional individual insurance*

The risks associated with, and arguments against, removing mandatory collective insurance requirements are many and varied. Just some examples of risks include:

i. It is important to remember that within strata schemes the common property and shared services are a collective responsibility of the individual owners, who have joint and several responsibilities in relation to loss or damage, and liabilities relating to common property and shared services – up to the full extent of their net wealth. These exposures are entirely separate from (that is, in addition to) lot owners' unique individual exposures in terms of their own assets.

   By not enforcing collective insurance requirements, it goes without saying that owners will be at risk in terms of not having their interests and liabilities in respect of common property and shared services protected. Individual lot owners' insurance policies will not cover owners corporations for loss or damage to common property – meaning building items making up common property will go uninsured (such as common property buildings, driveway surfaces, pipes, letterbox banks, boundary fences and gates). It is important to emphasise in this regard that in most circumstances, common property consists of, effectively, everything except for the airspace and contents items within the lot boundaries as defined on the relevant plan. As a result, all owners will be left with an unknown, and potentially unlimited, financial exposure.

This also begs the question – in circumstances where common property is uninsured – how do owners practically comply with their statutory duty to maintain and repair (in accordance with section 47 of the OC Act) following unforeseen fortuitous damage as a result of an event or accident?

ii. The potential for owners taking out policies of insurance with entities other than specialist strata title insurers and holding insurance not suited to the nature of the risk. Owners insuring individually will not have access to a number of covers that are standard in most strata insurance policies, but are not available through home or commercial building and contents policies – such as for office bearers' liability, fidelity guarantee, legal defence expenses and government audit costs, and voluntary workers.

iii. Failure by one or more owners to take out or renew their individual policy(ies) of insurance, or inadvertent or deliberate underinsurance, could create additional risk and potentially unlimited financial exposure for the remaining owners.

iv. Complications in relation to insurance claims may arise in cases of loss or damage affecting more than one lot (such as in the case of shared party walls) – including coordination of repairs between different insurers, and other service providers.

v. Individual owners that are underinsured or uninsured may not be compelled to undertake repairs following loss or damage affecting their own lot, or multiple lots including their own, resulting in loss of amenity and value to the remaining owners.

vi. Higher overall costs for owners insuring individually rather than through one collective insurance policy. Replacing a mandatory requirement to take out one collective owners corporation insurance policy with an option for each individual owner to separately insure, is akin to having a small business with – for the sake of the argument – 10 shareholders, and requiring those 10 shareholders to purchase 10 insurance policies to insure the same risks. This is an incredibly inefficient approach. To further illustrate the problem with increased costs: in the event of loss or damage affecting multiple lots, there would be a potential for unnecessary duplication of expenses for various repairers and other service suppliers, and payment of multiple excesses (on each individual policy affected) rather than a single excess payable on a strata insurance policy.

vii. In the absence of collective building insurance arrangements for an owners corporation, intending purchasers (potential owners) will experience difficulties securing finance from banks and other financial institutions. Current commercial practice of financial institutions is to confirm the currency (via a copy of the insurance schedule or 'certificate of currency' from the insurer) of collective insurance arrangements prior to authorising lending to intending purchasers.

The imperative importance of ensuring collective building insurance arrangements are effected is well-illustrated by recent examples of catastrophic events involving flammable cladding, the increasing incidence of natural disasters, as well as previous research conducted by the University of New South Wales City Futures Research Centre indicating

that some 72-85% of owners corporations have identified major defects in their buildings.[9] These are, broadly speaking, common property-related issues – and while exposures relating thereto may be mitigated through collective building insurance arrangements covering common property – little or no protection will be afforded by implementing an approach of optional individual insurances.

Moreover, the proposed amendments are inconsistent with approaches to strata and community title insurance adopted in, and would put the state of Victoria at odds with, all other state and territory jurisdictions.

While the risks are immediately obvious, by contrast it is apparent that *no benefits* associated with removing requirements for compulsory collective insurance arrangements have been identified – whether during CAV's "preliminary consultations, in the Issues Paper or Options Paper, or in the EM for the draft Bill itself.

Summary and recommendation

The proposed removal of collective building insurance requirements with respect to over 90% of all owners corporations in Victoria:

- Is a retrograde step;
- Is anomalous relative to approaches adopted in every other Australian state and territory jurisdiction;
- Has no basis in stakeholder feedback or findings from CAV's Consumer Property Law Review process;
- Represents a grossly disproportionate response to the identified problems it seeks to address;
- Is entirely incongruous with the stated justifications for increased regulation and interference in individual lot owners' property rights as described in the CAV Options Paper; and
- Has not been subject to any form of regulatory impact analysis.

Despite this, it has been reflected in the current draft Bill. This is simply untenable.

Strata Community Insurance recommends that the Bill should be amended to reflect a requirement to take out reinstatement and replacement insurance being applicable to *all* owners corporations, subject only to existing carve-outs pertaining to two-lot schemes – and that any alternative proposal must be subject to stakeholder consultation and comprehensive regulatory impact analysis.

Failing this, the amendment should be redrafted such that the requirement to take out reinstatement and replacement insurance would be applicable to *all* owners corporations (again, subject to existing carve-outs pertaining to two-lot schemes), however in instances where the owners corporation of a tier three or tier four scheme do not wish to take out such insurance they may resolve not to do so by unanimous resolution.

[9] https://cityfutures.be.unsw.edu.au/research/projects/defects-strata/. It is noted that while the stated percentages relate to NSW, indications are that this is consistent across other jurisdictions.

2. Public liability insurance (Bill clause 29; OC Act s60)

The EM provides (at p.10) that clause 30 of the Bill amends section 60(3) of the OC Act: "to increase the limit of liability of the insurance the owners corporation has under section 60(2), to a minimum of $20,000,000."

Strata Community Insurance commends this move to enhance the protection of those injured through negligently maintained common property by increasing the level of public liability insurance required to be taken out by owners corporations from $10 million for any one claim to $20 million, and to bring Victoria into line with other jurisdictions in this regard.

However, we believe there is an opportunity for the reforms to go even further, and should for a number of reasons:

- In our experience, the current level of cover mandated ($10 million) is grossly inadequate in today's commercial and legal environment – particularly with aging buildings, regular crowd exposures (including many balcony collapse examples), and rising costs associated with court payouts for negligently-caused injuries.
- By way of comparison, many insurance policies covering detached housing (home building and contents policies) routinely carry a minimum of $30 million cover, while state and local government contracts often require contractors to take out a minimum of $50 million of cover.
- Whilst some more prudent owners corporations routinely insure for a limit of liability in excess of the statutory minimum requirement (acknowledging that the prescribed limit is insufficient to mitigate their inherent risk), many others merely default to the minimum prescribed amounts irrespective of its adequacy relative to their particular risk – creating large gaps in financial exposure for individual lot owners comprising the owners corporation.
- Lot owners ultimately face an uncapped exposure (to the full extent of their net personal wealth) to call ups and other liabilities should the limit of indemnity of the owners corporation's public liability insurance prove to be inadequate.

It is noted that the Options Paper asked the specific question (at p.52):

> 45 What would be the cost of increasing the minimum public liability insurance amount to $20, $30 and $50 million?

While it has not been made clear why the ultimate decision made was to increase the statutory minimum requirement from $10 million to only $20 million, we assume a factor may have been perceived additional expense for consumers, considering commentary in the Options Paper that: "*It was noted that the premium increase involved in going from $10 million to $20 million of cover would be substantial but that it would not be much more if the level was increased to $30 million.*"

In this respect, we would reiterate our previous feedback provided in response to the Options Paper:

Although we are not in a position to comment on the pricing strategy and methodologies employed by other insurers or their agents, we do not consider this would not be the case with Strata Community Insurance.

We have detailed below what the increase in cost would be (in the case of Strata Community Insurance) of increasing minimum public liability insurance amounts. We note that this is based on the average premiums and sums insured for strata insurance policies in Victoria, is indicative only and based on rates for 2015 – 2016 (we are happy to provide further and more detailed information to CAV outside of this submission on a confidential basis). Also, the 'cost per lot owner' is based on an average of 10 lot owners per scheme (considering over 90% of owners corporations in Victoria comprise less than 10 lots).

- *An increase from $10 million to $20 million would involve an increase in premium in the order of 1.2% (around $50 – or $5 per lot owner per year).*
- *An increase from $10 million to $30 million would involve an increase in premium in the order of 1.6% (around $70 – or $7 per lot owner per year).*
- *An increase from $10 million to $50 million would involve an increase in premium in the order of 2.2% (around $95 – or less than $10 per lot owner per year).*

Recommendation

Consideration should be given to increasing the minimum limit of liability insurance to *more* than $20 million, and to *at least* $30 million for larger schemes – where crowd exposures and other public liability risk is higher.

3. New section 23A inserted – owners corporation may levy fees in relation to insurance

The Options Paper proposed (as "Option 16B" at p.52):

> "*Under this option, further and more substantial changes to the Act's insurance provisions would be made to enable owners corporations to*
> - *levy the cost of building insurance premiums on the basis of lot entitlement*
> - *levy lot owners with excesses payable on claims and on increased premiums resulting from claims, where the claim arose from the culpable or wilful act or the gross negligence of a lot owner, their lessees or guests*
> - *levy lot owners for the cost of damage to common property caused by them, their lessees or guests that is not covered by insurance or where the cost is less than the excess payable*
> - *levy lot owners for the excess where a claim relates only to their lots, i.e. not to the common property or to all lots, and*
> - *apply differential levies for insurance policy premiums where a particular use of a lot increases the risk.*
>
> *This option seeks to more finely tune the insurance provisions of the Act to enable owners corporations to achieve more equity.*"

The draft legislative amendments effectively seek to implement the abovementioned "Option 16B". As articulated in the EM (at pp.5-6), clause 12 of the Bill:

> "…*inserts new section 23A into the Act to enable an owners corporation to levy fees in relation to insurance.*
>
> *New section 23A(1) provides that, in addition to annual fees levied under section 23, an owners corporation may levy fees to cover the costs of the premium for reinstatement and replacement insurance taken out in accordance with Division 6 of Part 3 of the Act. Subsection (2) provides that such fees must be based on lot entitlement.*
>
> *New section 23A(3) provides that owners corporations may levy fees on individual lot owners to cover the costs of—*
>
> *(a) an excess amount or an increased premium payable on an insurance claim (if the claim is caused by a culpable or wilful act or the gross negligence of the lot owner, their lessee or an invitee of either the lot owner or lessee);*
> *(b) damage to the common property that is caused by a lot owner or a lot owner's lessee which is either not covered by insurance, or the cost of which is less than the excess amount payable on an insurance claim in relation to the damage; or*
> (c) *an excess amount on an insurance claim which solely relates to a particular lot owner's lot.*"

It is also worth noting CAV's own description of the draft legislative amendments, in its document titled "Owners Corporations and Other Acts Amendment Bill – Summary of reform proposals" (**CAV Summary document**)[10]:

> "*Reduce insurance and other inequities between lot owners by permitting owners corporations to separately levy lot owners for:*
> - *the cost of building insurance premiums on the basis of lot entitlement and differential risk*
> - *insurance excesses and increased premiums resulting from culpable actions*
> - *insurance excesses relating to single-lot claims*
> - *unrecoverable damage to common property, and*
> - *maintenance costs arising from particular uses of lots.*
>
> *(**Relevant clauses**: 11-13)*"

Strata Community Insurance wholly commends the draft amendments.

However, two drafting issues are apparent.

Firstly, new section 23A(3)(a) of the OC Act is drafted in the following words (emphasis added):

> "*(3) An owners corporation may levy a lot owner a fee to cover the cost of any of the following-*
>
> (a) *an excess amount or **an increased premium payable on an insurance claim** if the claim is caused by a culpable or wilful act or the gross negligence of…*"

We consider that the phraseology employed reflects a drafting error. Specifically, the words "increased premium payable on an insurance claim" implies that an insurer might charge an increased amount of premium at the time of a claim. This is not the case. What may occur in practice is that future premium payable (such as on renewal of the relevant insurance policy) may increase *as a result of* a previous claim. It is clear from the wording of the Options Paper that the regulatory intention underpinning this amendment was to allow owners corporations to levy lot owners a fee "*on increased premiums resulting from claims*", which is also reflected in the CAV Summary document: "…*permitting owners corporations to separately levy lot owners for…increased premiums resulting from culpable actions*".

It is recommended that the apparent regulatory intent might be achieved by replacing, in new section 23A(3)(a), the words:

> "…increased premium payable on an insurance claim…",

with:

> "…increased premium resulting from or attributable to an insurance claim…" – or other words of like import.

[10] Published at https://www.consumer.vic.gov.au/resources-and-tools/legislation/public-consultations-and-reviews/owners-corporations-and-other-acts-amendment-bill-exposure-draft-consultation.

Secondly, there is the matter of allowing owners corporations to levy fees to individual lot owners for recovering costs reflecting differential risk and its impact on insurance premiums.

To illustrate: there will be occasions where the risk profile of a lot disproportionately increases the insurance premium payable for the entire scheme – relative to the lot entitlement for that lot. For example, in a commercial strata scheme there may be two neighbouring retail shops, bearing an identical lot entitlement, one being a real estate office and the other being a tattoo parlour. In such a case, the presence of the tattoo parlour would have a much more significant impact on the overall premium charged for the scheme than would the presence of the neighbouring real estate office – despite the identical lot entitlement.

There is no allowance made in the draft legislative amendments for owners corporations to recover costs from individual owners in these circumstances.

This would appear to be a drafting oversight, or unintentional omission, being at odds with the Option Paper proposal to: "…enable owners corporations to… apply differential levies for insurance policy premiums where a particular use of a lot increases the risk," and being inconsistent with the CAV Summary document which suggests that the draft amendments permit: "…owners corporations to separately levy lot owners for: the cost of building insurance premiums on the basis of lot entitlement **and differential risk**." (Emphasis added.)

Amendments to the draft legislative provisions should be made to reflect the apparent regulatory intent, which is to allow owners corporations to recover costs from individual owners in circumstances where the assessed risk and impact on overall premium associated with their lot is disproportionate relative to their lot entitlement.

One way this might be achieved is through introduction, into section 23A of the OC Act, of words that mirror the wording of proposed new section 23(3A), that is:

> "*The owners corporation may levy an additional annual fee on a lot owner if—*
> *(a) the owners corporation has incurred additional costs arising from the particular use of the lot by the lot owner; and*
> *(b) an annual fee set on the basis of the lot liability of the lot owner would not adequately take account of those additional costs.*"