The Knight

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Document date 10th May 2019

The Knight's submission in relation to proposed changes to the Owners Corporations Act 2006

We wish to thank Consumer Affairs Victoria for the opportunity to provide comment on the proposed changes to the Owners Corporations Act 2006.

The Knight has a solid twenty-four-year reputation as one of Victoria's leading Owners Corporation Management providers, with a portfolio of properties that exceeds $6 billion in value.

Insight, integrity & results.

The Knight is a family business, 100% Victorian owned and operating from three locations, Malvern, Docklands and Geelong. For further information on our business please visit our website www.theknight.com.au

Proposed changes we applaud

- Lowering the threshold of decision making to commence legal proceedings for a matter that is within the civil jurisdictional limit of the Magistrates' Court. (S.18)
- No requirement for an Owners Corporation to use a common seal (S.18A)
- Mandatory for large Owners Corporations to prepare a Maintenance Plans and strike a levy to meet the plan's obligations (S.23(2) & S.36)
- Allowing an Owners Corporation to recover costs from a Lot owner or their lessee who causes damage to common property (S.23(3))
- Providing authority to an Owners Corporation to dispose of goods abandoned on common property (S.53A)
- Requiring additional important documents to be provided at the first meeting of the Owners Corporation such as the building maintenance manual, asset register, details of warranties. (S.67)
- Mandatory disclosure at the first meeting of the Owners Corporation of any relationship between the applicant for the registration of the plan of subdivision. Also, disclosure of any immediate or future financial transactions that arise out of the relationship. (S.67A)
- The initial owner of land affected by an Owners Corporation (i.e. developer) or an associate of theirs must not be appointed as the Manager or vote on any resolution of the OC that relates to building defects (S.68(4A))
- The initial Owners Corporation budget must be reasonable and sustainable. (S.68(4B))
- The initial owner of land affected by an Owners Corporation (i.e. developer) must not receive any payment from the appointed Manager. (S.68(4B))
- Any term in a contract of sale of a Lot that limits the voting rights of a purchaser of a Lot is void (S.89H)
- Reducing the default number of Committee members to seven (S.103)

Malvern

Level 2/2 Glenferrie Road

Docklands

1308/401 Docklands Drive

Geelong

Level 1/27-31 Myers Street

- Requiring terms be included in a Manager's contract of appointment (S.119A)
- Increasing the duties of Managers (S. 122)
- Requiring a Manager to disclose a beneficial relationship with a supplier (S.122A)
- Providing an Owners Corporation with power to make rules regarding external alterations and other works affecting Lot owners. (S. 138B)
- Requiring that an occupier of a Lot must ensure that their invitees comply with Owners Corporation rules and if an invitee breaches the rules the occupier of a Lot and the invitee are jointly and

Our 5 priorities of concern

1. Failure of the bill to address the need to have a minimum standard of qualification for Owners Corporation Managers

   Whilst there are proposed changes to increase the eligibility requirements for the registration of a Manager (S. 179(d)) we are of the opinion that a huge opportunity has been missed to increase the professionalism of the Owners Corporation Management industry by requiring a minimum level of qualification.

   We have had enough of being tarred with the same brush from rogue operators in the Owners Corporation industry behaving unscrupulously. Whilst implementing a minimum level of qualification will not eradicate this type of behaviour it will go a long way to reducing it.

2. Soft penalties for breaches of the Act by Managers

   We commend proposed changes in relation to a Manager not providing a benefit to the initial owner of land affected by the Owners Corporation in order to be appointed and requiring Managers to disclose a beneficial relationship with suppliers and disclosing commissions.

   We however fail to identify anywhere in the 'Act' that will act as a significant deterrent to breaching these obligations.

   We propose that there are significant penalty units for breaches of these obligations and that the Business Licencing Authority is provided the power to deregister a Manager who is found to have breached obligations on multiple occasions.

3. The introduction of a convoluted tier system

   Whilst we are not opposed to there being tiers to differentiate Owners Corporations, we are of the opinion that the proposed system will cause confusion. This is because

for ‘Tier 1’ Owners Corporations there are different requirements based upon the number of Lots i.e. over 100 Lots vs. Between 51 – 100 Lots.

A simple solution to eradicate any confusion is to have the same requirements for all Owners Corporations classified as ‘Tier 1’ or to add an additional tier.

Furthermore, we believe that the way tiers have been determined, based upon the number of Lots, is not appropriate. Often the number of Lots does not signify that an Owners Corporation is more complex or has additional financial obligations (i.e. a broad-acreage estate). We believe that the total amount of annual fees should come into the equation when determining tiers as it does currently.

We also suggest that the ‘Act’ clarifies that limited and unlimited Owners Corporations are to be treated separately.

4. Allowing Tier 3 & Tier 4 Owners Corporations to not insure collectively

We are of the opinion that the proposed change to allow ‘Tier 3’ & ‘Tier 4’ Owners Corporations a choice to insure collectively will have a detrimental effect on owners.

Should a Lot owner within a ‘Tier 3’ or ‘Tier 4’ Owners Corporation fail to take out insurance for their dwelling and significant damage occurs which they cannot afford to rectify then the balance of owners will have to deal with a potential unsightly dwelling.

We also believe that it will result in higher costs to Lot owners. ‘Tier 3’ and ‘Tier 4’ Owners Corporations would still be required to take out public liability insurance for common areas and most likely insurance cover for office bearer’s legal liability and fidelity guarantee. It is likely that there would be a significant saving obtaining insurance cover for the Owners Corporation and individual dwellings compared to the total sum of obtaining individual insurance policies.

5. Oversight in relation to Lots used for commercial purposes

As a result of proposed changes, it is apparent that owners of Lots used for commercial use (i.e. offices, shops, warehouses, restaurants) are not provided the same rights as owners of residential Lots.

For instance, when it comes to determining what tier an Owners Corporation is commercial Lots are to be disregarded, commercial Lots are to be excluded from determining a quorum for a meeting and commercial Lots will be omitted from the calculation of the right to hold proxies.

We are of the opinion that the ‘Act’ should provide owners of commercial Lots with the same rights as owners for residential Lots.

Other points of note

- If an Owners Corporation is not required to use a common seal, we suggest that reference to a common seal is removed from the 'Act' entirely.

- We believe that a requirement for an Owners Corporation to comply with Australian Accounting Standards is too onerous. We agree that accounting practices in the industry need to improve however this should be in line with a standard specific to Owners Corporation accounting practices.

- In relation to disclosure at the first meeting of the Owners Corporation why does this only relate to immediate or future financial transactions that will arise out of the relationship with the Manager? This should be extended to cover every Owners Corporation service provider.

- In relation to S.68 (4A) the initial owner shouldn't be able to do either option and therefore the word 'or' should be removed.

- In relation to S.85 (2) (ii) there needs to be instruction as to what matters are deemed to be urgent.

- In relation to S.119 (1D) reference is made to a person. This should be expanded to include a company.

- In relation to S.119A(3) reference should be made to subsection (1d)

- In relation to Part 10 there doesn't appear to be any change in relation to the issuing of breach notices. Currently the issuing of breach notices is superfluous as the Owners Corporation can make an application to VCAT without having to issue a breach notice subject to the Owners Corporation's dispute resolution process being followed.

Thank you for your consideration of our submission. Should you require any clarification please contact the undersigned.

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