



# Regulatory Impact Solutions



## Regulatory Impact Statement

Owners Corporations Regulations 2018

**Prepared for  
Consumer Affairs Victoria**

July 2018



Commissioner for  
Better Regulation  
Red Tape Commissioner

GPO Box 4379  
Melbourne Victoria 3001  
Telephone: 03 9092 5800

23 July 2018

Mr Simon Cohen  
Director  
Consumer Affairs Victoria  
121 Exhibition Street  
MELBOURNE VIC 3000

Dear Mr Cohen

*Simon*

## **REGULATORY IMPACT STATEMENT FOR THE OWNERS CORPORATIONS REGULATIONS 2018**

I would like to thank the staff of Consumer Affairs Victoria (CAV) for working with the Office of the Commissioner for Better Regulation on the preparation of the Regulatory Impact Statement (RIS) for the proposed Owners Corporations Regulations 2018, which are proposed to replace the current Regulations that sunset on 3 December 2018.

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RISs prepared in Victoria. As you know, the Commissioner's role is to advise on the adequacy of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 20 July 2018 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

### **Background**

The *Owners Corporations Act 2006* (the Act) provides the legislative basis for regulating owners corporations in Victoria. It provides for the management, powers and functions of owners corporations, as well as mechanisms to resolve disputes.

'Prescribed' owners corporations are required to meet certain requirements set in the Act or Regulations. The threshold for this prescription is specified in the Regulations. At present the threshold is set at owners corporations of more than 100 lots or levy annual fees of more than \$200,000 in a financial year.

The Owners Corporation Regulations give effect to the Act by setting:

- the threshold for 'prescribed' owners corporations
- fees, costs and charges;
- classes of prescribed owners corporations;
- standards for financial statements and maintenance plans; and
- model rules for owners corporations.

## Consumer Property Law Review

In 2015, the Victorian Government announced the Consumer Property Law Review, a process which is still under way. The *Owners Corporations Act 2006* will be considered as part of that review and there may be consequent implications for the Owners Corporations Regulations.

Given this, the CAV makes it clear in the RIS that it considers the sunseting review of the Regulations on the basis of the current Act.

## Options considered

In this sunseting RIS, CAV has addressed setting the threshold for 'prescribed' owners corporations and its concomitant requirement for:

- audited financial accounts;
- maintenance plans;
- professional indemnity insurance for owners corporation managers;
- standard accounting of financial statements; and
- fees for registered owners corporation managers.

A review of the fees that owners corporations can charge for provision of an owners corporation certificate has not been undertaken for this RIS. CAV explains that this is because these fees were updated in 2014 following a specific fees RIS, and appear to be operating well. Similarly, a review of fees payable by registered owners corporation managers has not been undertaken, as a review may be warranted in light of the Consumer Property Law Review. This seems appropriate as potential fee types may change as part of that process.

## The proposed Regulations

The proposed Regulations largely maintain the existing Regulations, and introduce a number of changes to address specific issues including:

- ***requiring paid owners corporation managers to have professional indemnity insurance of \$2 million or more*** to ensure negligence claims can be met;
- ***broadening the scope of the model rules***, so that there is a higher standard level of governance for owners corporations; and
- ***providing the ability for owners corporation committees to remove a member who is regularly absent from meetings***, to enable the committee to progress its work efficiently

Although the RIS contains some discussion about whether the threshold for being a 'prescribed' owners corporation should be changed, CAV is of the view that any such changes should be considered in the context of the ongoing Consumer Property Law Review.

## Estimated costs and benefits of the Regulations

RISs are required to estimate the costs and benefits of regulatory impacts compared to the 'base case' where no regulations apply.

CAV estimates that the total costs attributable to the proposed Regulations are \$2.03 million per year on owners corporations and managers, (\$19.51 million in net present value terms over 10 years). 65 per cent of this cost is the requirement for prescribed owners corporations to prepare maintenance plans, while 22 per cent is for prescribed owners corporations to audit their financial accounts. The data used to estimate these costs are based on insurance quotes, CAV data and stakeholder input.

While not easily quantifiable, the benefits of maintenance plans and audited financial results include reducing loss to lot owners from fraud and other financial mismanagement, ensuring that repair and maintenance is done efficiently, and spreading maintenance costs more fairly across successive owners.

### **Transitions, evaluation and future work**

The proposed Regulations are planned to commence on 2 December 2018. CAV has outlined its plans to explain the proposed new requirements to affected stakeholders. No significant changes regarding compliance and enforcement are anticipated to CAV operations.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin  
**Commissioner for Better Regulation**

# Owners Corporations Regulations 2018

## Regulatory Impact Statement

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*, and to facilitate public consultation on the proposed Owners Corporations Regulations 2018 (the proposed Regulations). The aim of the proposed Regulations is to prescribe certain information and requirements for the purposes of the *Owners Corporations Act 2006* (the Act). A copy of the proposed Regulations is provided at Appendix C of this RIS.

The aim of this RIS is to explain the background to and objectives of the proposed Regulations, identify some alternative options for meeting those objectives, and estimate the costs and benefits of the proposed Regulations and the alternative options. In this way, the RIS will assist members of the public to provide comment on the proposed Regulations.

Public comments and submissions are invited on the proposed Regulations in response to the information provided in this RIS. All submissions will be treated as public documents and will be available to other stakeholders either by being posted on the Consumer Affairs Victoria (CAV) website at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au), or under the *Freedom of Information Act 1982*.

Written comments and submissions should be forwarded no later than Thursday 30 August 2018 to:

Owners Corporations Regulations 2018 RIS Submissions  
Policy and Corporate Services  
Consumer Affairs Victoria  
GPO Box 123  
MELBOURNE VIC 3001  
or  
[cav.consultations@justice.vic.gov.au](mailto:cav.consultations@justice.vic.gov.au)

## Glossary

<b>Abbreviations</b>	
<b>The Act</b>	<i>Owners Corporations Act 2006</i>
<b>The current Regulations</b>	Owners Corporations Regulations 2007
<b>The proposed Regulations</b>	Owners Corporations Regulations 2018
<b>AIC</b>	Australian Institute of Conveyancers
<b>CAV</b>	Consumer Affairs Victoria
<b>LIV</b>	Law Institute of Victoria
<b>LUV</b>	Land Use Victoria, (formerly Land Titles Office), part of the Department of Environment, Land, Water and Planning
<b>NPV</b>	Net present value
<b>RIS</b>	Regulatory Impact Statement ( <i>this document</i> )
<b>REIV</b>	Real Estate Institute of Victoria
<b>SCAV</b>	Strata Community Australia (Vic)
<b>Concepts</b>	
<b>Common property</b>	The common property is collectively owned by the lot owners as tenants-in-common. Common property comprises any parts of the land, buildings and airspace that are not lots on the plan of subdivision. It may include gardens, passages, walls, pathways, driveways, stairs, lifts, foyers and fences.
<b>Maintenance plan</b>	A plan for the maintenance of the common property for which an owners corporation is responsible. The plan must set out the major capital items anticipated to require repair and replacement within the next 10 years, the present condition or state of repair of those items, when those items or components of those items will need to be repaired or replaced, and the estimated cost of the repair and replacement of those items.
<b>Owners corporation</b>	Previously known as a ‘body corporate’, the Act defines an owners corporation as ‘a body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or a cluster subdivision’.
<b>Owners corporation certificate</b>	A certificate providing certain information relating to the owners corporation and lot in question. The information includes the current fees for the lot, the date up to which the fees for the lot have been paid, any unpaid fees or charges for the lot, any special fees or levies which have been struck, any repairs, maintenance or other work which has been or is about to be performed which may incur additional charges, details of insurance policies, the total funds held by the owners corporation, details of any current contracts, leases, licences or agreements affecting the common property, details of any legal proceedings to which the owners corporation is a party and any circumstances of which the owners corporation is aware that are likely to give rise to proceedings, information on the appointment of a manager.
<b>Owners corporation register</b>	The register kept by an owners corporation in accordance with section 147 of the Act. The Register includes information about the owners corporation such as the title details, the name and address of each lot owner, the name and contact details of the manager, registration number of the manager, lot liability and lot entitlements for each lot affected by the owners corporation, the basis for the setting of lot liability and lot entitlement (if available), details of any notices or orders served on the owners corporation, details of contracts, leases and licences entered into by the owners corporation, and details of the insurance policies.

# Summary

## Background

The *Owners Corporations Act 2006* (the Act) provides the legislative basis for regulating owners corporations in Victoria. While the Act sets out most of the framework for how owners corporations are regulated, the associated Owners Corporations Regulations 2007 (the current Regulations) prescribe specific details in relation to some elements of that framework.

In Victoria, regulations—statutory rules made under the authority of an Act—automatically expire (sunset) after ten years. The current Regulations were due to sunset in December 2017, but were extended for 12 months<sup>1</sup> and will now sunset on 3 December 2018. New Regulations are needed to replace them.

The sunsetting/remaking process provides an opportunity to revisit whether regulations are still required, and if so, whether there are ways to improve them.

The purpose of an owners corporation is to allow for the efficient and accountable management of common property. Owners corporations are separate legal entities that are responsible for managing common property, and within which lot owners have clearly defined rights to participate in decision making. In the absence of owners corporations, there would be unclear rights between lot owners in dealing with common property, or lengthy disputes where lot owners disagree about common property matters.

Owners corporations ensure that all lot owners are collectively responsible for common property, have the ability to properly exercise their rights in relation to the common property, and facilitate more efficient dealings by giving the owners corporation powers to enter into transactions.

Currently, there are over 85,800 active owners corporations in Victoria registered in respect of over 72,000 plans of subdivision, and covering over 772,200 lots.

## Objectives of the proposed Regulations

The main purpose of the Act is to provide for the management, powers and functions of owners corporations.

As a concept, owners corporations are intended to be an efficient and effective mechanism for lot owners to exercise their rights and meet their responsibilities in relation to common property. The objectives of any regulatory framework should therefore inherently aim to provide for efficient coordination and administration of these rights and responsibilities, while protecting individual property rights themselves.

Drawing on the nature of the problems discussed in Chapter 2, the objectives of the proposed Regulations are:

- to protect the rights and interests of lot owners in relation to common property, including protecting against avoidable financial exposure, and
- to support and promote good governance of owners corporations.

---

<sup>1</sup> Subordinate Legislation (Owners Corporations Regulations 2007) Extension Regulations 2017

## The proposed Regulations

The proposed Regulations—provided at Appendix C—support the effective operation of the Act.

- The proposed Regulations define prescribed owners corporations, which are required to prepare maintenance plans and have their financial statements audited under the Act. It is proposed to continue the current definition for this purpose, that being owners corporations with more than 100 lots or more than \$200,000 in annual fees levied in a financial year.
- The proposed Regulations prescribe a set of Model Rules that are used as a default set of rules for all owners corporations. This is a way for owners corporations (particularly smaller owners corporations) to avoid having to develop their own set of rules, which can be costly. It is proposed to retain the Model Rules from the current Regulations, with a number of minor additions to provide for the appointment of members to sub-committee, and requiring approval before changing the external appearance of lots.
- The proposed Regulations set maximum fees that an owners corporation can charge for people seeking an owners corporation certificate, or a copy of the register or other records. This is to ensure there are not unreasonable cost barriers to people accessing this information.
- The proposed Regulations set the level of professional indemnity insurance required to be held by registered owners corporations managers. It is proposed to increase the minimum level of cover from \$1.5 million to \$2 million, as this is expected to have only a small incremental cost but offer further protection for lot owners.
- The proposed Regulations require that owners corporations maintain a sign with their postal address, or contact details of their manager, at the property. This is the same as the current requirements.
- The proposed Regulations provide a new regulation that gives an ability to an owners corporations committee to remove a member who does not attend, without prior notice, 25 per cent of committee meetings within a six month period. This is to enable the committee to progress its work efficiently.
- The proposed Regulations set fees for an application to be registered as an owners corporation manager, and the annual registration fee for managers, as well as a late lodgement fee for managers who fail to lodge their annual registration on time. It is proposed to continue these at the current rate (in terms of fee units) as shown in Table 1 below:

**Table 1: Fees for managers collected by CAV**

<b>Fee</b>	<b>Fee amount (fee units)</b>	<b>Fee amount (\$ amount in 2018-19)<sup>2</sup></b>
Registration application fee	14.26	\$206.10
Annual registration fee	10.01	\$144.60
Late lodgement fee	1	\$14.50

A detailed review of fees has not been undertaken, as the Government has been considering changes to the Act which may change the specific activities undertaken by CAV and the level of resources needed to undertake them, which may affect the fees. This would warrant a reconsideration of both the level and the structure of fees. For this reason, a detailed reassessment of fees for registered managers was not undertaken for this RIS.

---

<sup>2</sup> For 2018-19, one fee unit equals \$14.45. The value of a fee unit is set under the *Monetary Units Act 2004*, and is generally increased from 1 July each year to take account of increased costs. Fees are rounded to the nearest 10 cents.

The proposed Regulations also establish further requirements that financial statements are prepared in accordance with the Australian Accounting Standards<sup>3</sup> (in order to promote transparency and consistency between owners corporations), and makes explicit the types of assets that should be included within maintenance plans.

## Impacts of the proposed Regulations

The total costs attributable to the proposed Regulations are set out below.

**Table 2: Summary of costs of proposed Regulations**

Regulation	Costs (annual, for 2018-19)	Costs of life of Regulations (10 years) (NPV)*
For the purposes of the Act, prescribing owners corporations that must undertake audits of financial statements and prepare maintenance plans	\$1,779,877	\$17,115,988
Prescribing a minimum level of professional indemnity insurance for owners corporations managers	\$109,820	\$1,056,072
Fees for registered managers	\$105,087	\$1,010,557
Letter box and postal address signs	\$34,000	\$326,957
<b>TOTAL</b>	<b>\$2,028,784</b>	<b>\$19,509,574</b>

\* 10-year figure has assumed an increase in the number of owners corporations and managers of 2 per cent per year, based on average growth in recent years. Net present value has used a real discount rate of 4 per cent.

The groups affected by the proposed Regulations are owners corporations (and their individual members), and registered managers of owners corporations.

- The mandatory requirement to audit financial statements is expected to affect 403 owners corporations (or 0.5 per cent of all owners corporations).
- The mandatory requirements to prepare maintenance plans is expected to affect 670 owners corporations (or 0.8 per cent of all owners corporations).
- Increasing the prescribed minimum level of professional indemnity insurance is expected to affect 169 registered managers (or 25 per cent of all managers).
- Prescribed fees will affect all registered managers (685).
- Setting Model Rules will benefit 81,500 owners corporations (95 per cent) as these owners corporations currently use the Model Rules, and if the Model Rules are not included in the proposed Regulations, these owners corporations would need to spend time and cost to develop their own rules, or would operate without rules which could increase poor decisions or disputes.
- Setting maximum fees that can be charged by owners corporations to obtain a certificate or copies of the register or other records will potentially benefit any interested party that requires access to these documents, in particular owners corporations certificates, which are generally required for all sales of properties (around 60,000 individual lots are sold per annum).

The proposed Regulations are not expected to have a material impact on competition or a disproportionate impact on small business.

<sup>3</sup> Accounting standards made by the Australian Accounting Standards Board (AASB).

## Alternative options considered

In preparing the proposed Regulations, a range of alternative approaches were considered.

- Different thresholds of number of lots or annual revenue were considered in defining the prescribed owners corporations required to prepare maintenance plans and audit of financial statements. However, it was considered that the proposed approach, which preserves the existing definition, provides an appropriate balance between cost and mitigation of risk.
- Consideration was given to remaking the Model Rules with either no changes, or additional Rules. Preliminary consultation with industry representatives yielded a number of suggestions for expanding the Model Rules. However, it was determined that many of these were not appropriate to be included in Model Rules, or lacked the relevant head of power to allow inclusion. The proposed minor additions to the Model Rules represent a benefit to owners corporations by promoting efficient and good governance practices.
- Different levels of professional indemnity insurance for registered managers were also considered. CAV considered the cost impact of setting different minimum levels, and the benefits provided to lot owners by protecting their interests in any claims against managers.

## Consultation

In April and May early 2018, a number of industry stakeholder groups—the Consumer Action Law Centre, the Law Institute of Victoria (LIV), the Property Council of Australia (Victorian Division), Residents of Retirement Villages Victoria (RRVV), the Real Estate Institute of Victoria (REIV) and Strata Community Australia (Vic) (SCAV)—were consulted on the operation of the current Regulations, to determine whether there was a justification to continue with the current Regulations and/or whether changes were needed. Input from these stakeholders was used to develop the proposed Regulations and complete the analysis on their impact for this Regulatory Impact Statement (RIS).

This RIS has been prepared to assist interested stakeholders to review the proposed Regulations and provide any feedback on the proposed Regulations. Stakeholders are invited to provide any feedback, which will be taken into consideration before the proposed Regulations are made. Specific areas that stakeholders may wish to comment on are:

- whether there may be any unintended consequences of any of the proposed Regulations
- whether the assumptions included on the existence of the problems addressed by the proposed Regulations are reasonable, and
- whether there are any other alternative options that could be considered that have not been discussed in this RIS.

# Table of Contents

<b>1</b>	<b><i>Background</i></b> .....	<b>1</b>
1.1	Purpose of owners corporations.....	1
1.2	Snapshot of owners corporations in Victoria .....	1
1.3	Regulatory framework for owners corporations in Victoria .....	2
1.4	Process for making new Regulations and preliminary consultation.....	4
1.5	Review of the Act .....	5
<b>2</b>	<b><i>The problems addressed by the proposed Regulations</i></b> .....	<b>6</b>
2.1	Audit of financial statements.....	9
2.2	Preparation of maintenance plans.....	9
2.3	Model rules.....	11
2.4	Access to records, register and certificates.....	12
2.5	Professional indemnity insurance.....	13
2.6	Letterbox or other indication of owners corporation .....	15
2.7	Committees .....	15
2.8	Fees for registered managers .....	15
<b>3</b>	<b><i>Objectives</i></b> .....	<b>17</b>
<b>4</b>	<b><i>Feasible options and their costs and benefits</i></b> .....	<b>18</b>
4.1	Prescribed owners corporations—mandatory audits and maintenance plans.....	18
4.2	Model rules.....	22
4.3	Capping fees for access to owners corporation information.....	24
4.4	Professional indemnity insurance for managers.....	25
4.5	Letterboxes and indication of owners corporations .....	27
4.6	Committees .....	28
<b>5</b>	<b><i>Summary of impacts</i></b> .....	<b>29</b>
5.1	Aggregate impact of proposed Regulations .....	29
5.2	Groups affected .....	30
5.3	Impact on competition .....	30
5.4	Impact on small business .....	32
<b>6</b>	<b><i>Implementation and Evaluation</i></b> .....	<b>33</b>
6.1	Implementation.....	33
6.2	Evaluation.....	33
	<b><i>Appendix A: Cost assumptions</i></b> .....	<b>35</b>
	<b><i>Appendix B: Cost Recovery principles</i></b> .....	<b>37</b>
	<b><i>Appendix C: Draft proposed Regulations</i></b> .....	<b>38</b>

# 1 Background

## 1.1 Purpose of owners corporations

Owners corporations exist to provide a robust legal framework to protect property rights, in this case real property. The economic rationale for a robust property rights regime is generally to improve the efficiency of use of an underlying resource.<sup>4</sup>

Subdivisions of land often include what is known as common property—parts of the land, buildings and airspace that are not lots on the plan of subdivision and are intended to be used or enjoyed by more than one lot owner. This may include gardens, passages, walls, pathways, driveways, stairs, lifts, foyers and fences. The common property is collectively owned by the lot owners as tenants-in-common; access, use, and exclusion are controlled by the joint owners. Common property vests in the members of the lots as tenants in common in proportion to their lot entitlement.

Managing and dealing with common property, where rights are held and exercised by a group, can be inefficient and can become frustrated, particularly where individual and joint benefits of use diverge or where the size of the group hinders effective governance.<sup>5</sup>

The mechanism that has emerged to resolve these problems is the body corporate, now more commonly known in Victoria as an owners corporation. An owners corporation is a separate legal entity that is responsible for managing the common property, and within which lot owners have clearly defined rights to participate in decision-making. The purpose of an owners corporation is to allow for the efficient and accountable coordination of decisions that relate to common property. In the absence of owners corporations, there would be unclear rights between lot owners in dealing with common property, or lengthy disputes where lot owners disagree about common property matters.

Owners corporations ensure that all lot owners are collectively responsible for common property, have the ability to properly exercise their rights in relation to the common property, and facilitate more efficient dealings by giving the owners corporation powers to enter transactions.

## 1.2 Snapshot of owners corporations in Victoria

Currently, there are over 85,800 active owners corporations in Victoria, in respect of over 72,000 plans of subdivision, and covering over 772,200 lots.<sup>6</sup> More than 80 per cent of owners corporations have less than 10 lots. The average number of lots per owners corporation is 9 lots (arithmetic mean), however weighted for the frequency of size, the average number of lots is 7. Reflecting the skewed distribution, the median number of lots is 3, and the mode (most common) is 2.

**Table 3: Size of owners corporations in Victoria**

Number of lots in the owners corporation	Number of owners corporations	Proportion of total owners corporations
0 – 2 lots	29,896	34.8%
3 – 9 lots	40,401	47.1%
10 – 50 lots	13,832	16.1%
51 – 100 lots	937	1.1%
100 – 150 lots	272	0.3%
More than 150 lots	487	0.6%

<sup>4</sup> Calabresi, Guido, and Melamed, A. Douglas (1972). 'Property Rules, Liability Rules and Inalienability: One View of the Cathedral'. *Harvard Law Review*, 85: 1089–1128.

<sup>5</sup> Guerin, K. (2003). *Property Rights and Environmental Policy: A New Zealand Perspective*. Wellington, New Zealand: NZ Treasury.

<sup>6</sup> Land Use Victoria subdivision registration data.

There has been a profound social transformation in the ways Victorians live and work over the past two decades. Changing lifestyle choices of Victorians and demographic shifts have led to rapid growth in higher density dwellings governed by owners corporations. Over the past three years, the number of owners corporations has grown by just over 2 per cent per annum, slightly higher than the growth in population. This in part reflects that in recent years new dwellings are more likely to be in high-rise apartment buildings and medium density redevelopment subdivisions (duplexes and townhouses replacing previous single dwellings). This is seen in the growth rates of 2-3 lot and 100+ lot owners corporations growing faster than other types (2.5 per cent compared to less than 2 per cent). Over the next ten years, high rise apartment growth is expected to slow.<sup>7</sup>

The peak industry body for owners corporation managers, Strata Community Australia (Vic) (SCAV) estimates that owners corporations in Victoria manage property to the value of \$300 billion, and that approximately 1.5 million Victorians, or almost one in four, live in or are affected by owners corporations. Around 50 per cent of all plans registered by Land Victoria (now Land Use Victoria) in 2013 involved owners corporations.<sup>8</sup>

### 1.3 Regulatory framework for owners corporations in Victoria

In Victoria, owners corporations are created under the *Subdivision Act 1988*. Where a subdivision of land includes common property, the plan of subdivision must provide for the creation of one or more owners corporations, which are created upon registration of the plan by Land Use Victoria.

Once an owners corporation is established, the *Owners Corporations Act 2006* (the Act):

- sets out the functions and powers of owners corporations
- provides for powers relating to services and property, and
- allows the owners corporation to bring legal proceedings.

The Act permits, and in some cases requires, owners corporations to:

- levy fees
- keep proper accounts
- develop a maintenance plan
- manage a maintenance fund, and
- take out appropriate insurance.

A key duty of owners corporations is to manage and administer the common property, including repairing and maintenance.

The Act sets out administrative requirements for owners corporations, including:

- requirements and procedures for meetings
- the responsibilities of officer holders (including managers, who are required to be registered if they receive a fee or award for their work), committees, and lot owners, and
- record keeping requirements.

The Act establishes the procedures for resolving disputes and allows the owners corporation to make rules pertaining to the use of common property.

Figure 1 below sets out the basic elements of the regulation of owners corporations in Victoria.

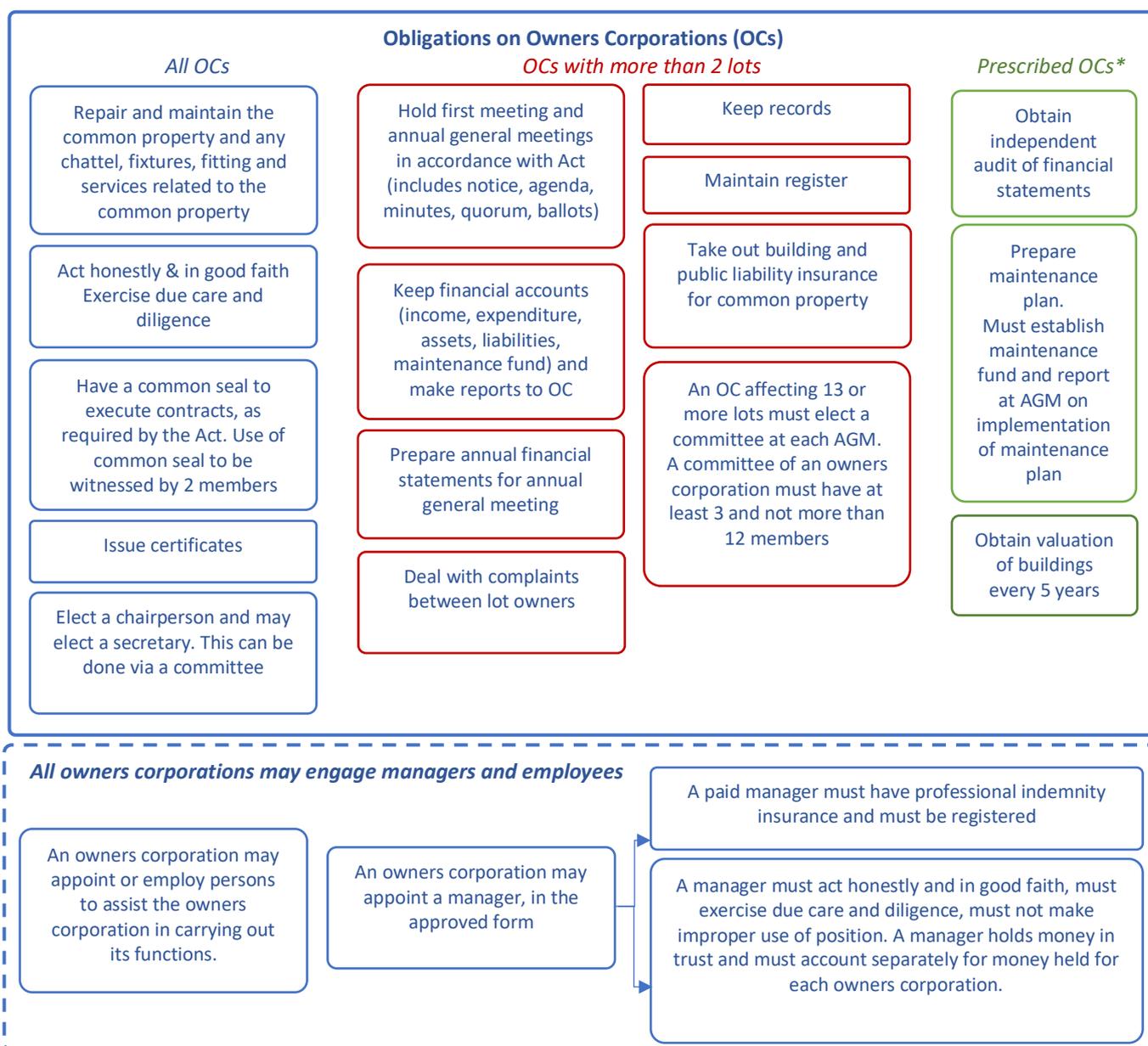
---

<sup>7</sup> JLL Research, Australia Melbourne Apartment Market Commentary 4Q17, published 29 January 2018.

<sup>8</sup> Strata Community Australia (Victoria):

[http://vic.strata.community/documents/AGM/2016/Annual\\_Report\\_AGM\\_2016.pdf](http://vic.strata.community/documents/AGM/2016/Annual_Report_AGM_2016.pdf)

**Figure 1: Regulation of Owners Corporations (current arrangements)**



\* The Act specifies these additional requirements will apply for 'prescribed' owners corporations. Prescribed owners corporations are defined in the Regulations. The current definition is all owners corporations that have more than 100 lots OR levy more than \$200,000 in fees in a financial year.

The Act provides a wide range of functions and powers to owners corporations to enable them to fulfil their purpose, such as powers to borrow and invest money. An owners corporation has perpetual succession and a common seal and is capable of suing and being sued in its own name. Owners corporations are not permitted to carry on a business. (Despite their name, owners corporations are excluded from the operation of the *Commonwealth Corporations Act 2001*).

The Act sets out how the owners corporations may make decisions, including the types of resolutions required for certain actions. This is intended to protect the interests of lot owners.

Decisions of owners corporations, and actions of individual lot owners, are also governed by rules made for each owners corporation. A plan providing for the creation of an owners corporation or for the merger of owners corporations may be accompanied by a document specifying the proposed rules for the owners corporation, or rules can be made (and amended) by special resolution of the

owners corporation. A rule must relate to a matter set out in the Act, and be for the purpose of the control, management, administration, use or enjoyment of the common property or of a lot. If the owners corporation does not make any rules or revokes all of its rules, then model rules (included at Schedule 2 of the Owners Corporations Regulations 2007 (the current Regulations) made under the Act) apply to it.

#### 1.4 Process for making new Regulations and preliminary consultation

The Act provides the legislative basis for regulating owners corporations in Victoria. While the Act sets out most of the framework for how owners corporations are regulated, the current Regulations prescribe certain requirements and additional detail in relation to some elements of that framework.

In Victoria, regulations—statutory rules made under the authority of an Act—automatically expire (sunset) after ten years. The current Regulations were due to sunset in December 2017, but were extended for 12 months<sup>9</sup> and will now sunset on 3 December 2018. New Regulations are needed to replace them.

The sunsetting/remaking process provides an opportunity to revisit whether regulations are still required, and if so, whether there are ways to improve them. Before new Regulations are made, the *Subordinate Legislation Act 1994* (SLA) requires:



In 2017 and early 2018, industry stakeholders—Law Institute of Victoria (LIV), Residents of Retirement Villages Victoria (RRVV), Real Estate Institute of Victoria (REIV) and Strata Community Australia (Vic) (SCAV)—were consulted on the operation of the current Regulations, to determine whether there was a justification to continue with the current Regulations and/or whether changes were needed. Stakeholders reported that the current Regulations are still generally fit for purpose, but suggested a number of areas where they could be strengthened or expanded. Some of these suggestions were outside the scope of the current Regulations as they would require a change to the Act, or are more appropriately considered in the context of the Consumer Property Law Review (see below). Suggestions that were considered in the remaking of the Regulations include:

- increasing the minimum level of professional indemnity insurance required to be held by registered owners corporations managers
- expanding the matters for which Model Rules are prescribed, in particular to include dealing with deemed resignation from committees, external appearance of lots and notice of renovations, and
- amendments to the owners corporations that are deemed to be prescribed owners corporations.

The proposed new Owners Corporation Regulations 2018 (the proposed Regulations) have been prepared and are included at Appendix C to this RIS. Interested parties are invited to review and provide written submissions to CAV.

---

<sup>9</sup> Subordinate Legislation (Owners Corporations Regulations 2007) Extension Regulations 2017

## 1.5 Review of the Act

In August 2015 the Victorian Government announced the Consumer Property Law Review, which included an examination of the Act. Issues papers seeking stakeholder views on the conduct of owners corporation managers, and the regulation of owners corporations in general, were released in 2016. An Options Paper canvassing potential reforms to the Act and associated legislation was released for public comment in November 2016, with submissions closing in December 2016.

The remaking of the Regulations has been considered in the context of the current Act only. However, feedback from stakeholder submissions to the Review have informed the remaking of the Regulations in some areas.

## 2 The problems addressed by the proposed Regulations

The proposed Regulations fill important gaps in the regulatory framework for owners corporations. The importance of these measures is clearly illustrated by considering the implications if no regulations were in place.

**Table 4: Regulation of owners corporations if there were no Regulations – Overview**

Framework established in the Act	What happens if there were no Regulations	Why this is a problem
<p><u>Audit of Annual Financial Statements</u> All owners corporations with more than 2 lots must keep proper financial accounts and prepare annual financial statements.<sup>10</sup> Any owners corporation may decide to have their financial statements professionally audited, however prescribed owners corporations must have their financial statements audited.<sup>11</sup></p>	<p>Without regulations, there would be no prescribed owners corporations that must have their financial statements audited. All audits would be voluntary for all owners corporations.</p>	<p>For some owners corporations, their size and/or the amount of funds involved pose a risk of financial mismanagement. Lot owners in larger owners corporations have limited ability to seek assurance of the accuracy of financial statements.</p>
<p><u>Maintenance Plans</u> All owners corporations may prepare a maintenance plan for the property, but prescribed owners corporations must prepare a maintenance plan.<sup>12</sup> The Act sets out what is to be included in a maintenance plan.</p>	<p>Without regulations, there would be no prescribed owners corporations that must prepare a maintenance plan. All maintenance plans would be voluntary for all owners corporations.</p>	<p>For some owners corporations, their size and/or the amount of assets involved pose a risk of inadequate funds being set aside to pay for maintenance works when required. This can lead to increased costs of maintenance and repair, sub-standard assets, or unplanned extraordinary fees levied on lot owners.</p>
<p><u>Making of Rules</u> All owners corporations have the power to make their own rules, if the rules relate to the matters set out in Schedule 1 of the Act. The Act provides for the making of Model Rules, that may be adopted by owners corporations. If an owners corporation does not have its own rules in relation to a particular matter, the Model Rules in relation to that matter will be deemed to apply.<sup>13</sup></p>	<p>Without regulations, there would be no Model Rules. The making of rules on any matter set out in Schedule 1 of the Act would be entirely voluntary.</p>	<p>Many owners corporations use the Model Rules. If there were no Model Rules, every owners corporation would need to develop and agree on their own rules, or not have rules (which could lead to poor governance and disputes).</p>

<sup>10</sup> sections 33, 34.

<sup>11</sup> section 35.

<sup>12</sup> section 36.

<sup>13</sup> section 139.

Framework established in the Act	What happens if there were no Regulations	Why this is a problem
<p><u>Access to documents</u> Any person may apply to the owners corporation for an owners corporation certificate, copy of the owners corporations register, or other records that the owners corporations is obliged to keep under the Act. For certificates, the application must be in writing and must be accompanied by the fee determined by the owners corporation, which must not exceed the relevant prescribed fee.<sup>14</sup> For the register and other records, a lot owner, a mortgagee of a lot, a purchaser of a lot or the representative of a lot owner or mortgagee or purchaser of a lot, may inspect the owners corporation register or other records for free; they may request a copy of the register or documents, for which the owners corporation may charge a fee. The fees must not exceed any prescribed fee.<sup>15</sup></p>	<p>Without regulations, there would be no maximum on the amount an owners corporation can charge for a certificate, copies of the register, or copies of other records held by the owners corporation.</p>	<p>With no prescribed maximum, owners corporations could charge fees that are high, effectively restricting access to certificates, copies of the register, or other documents held by the owners corporations. Access to these documents may be required in pursuing and resolving disputes, or for lot owners to enter other transactions. Barriers to access may undermine good governance.</p>
<p><u>Professional Indemnity Insurance</u> An owners corporation may appoint a person to be the manager of the owners corporation. If the manager is to receive a fee or reward for carrying out the functions of manager, a person is not eligible to be appointed unless the person is a registered manager. A person must not be appointed as a manager for fee or reward unless the person holds professional indemnity insurance that is sufficient to meet claims up to a level of a prescribed amount in any one year.<sup>16</sup></p>	<p>Without regulations, there would be no requirement for registered managers to hold professional indemnity insurance.</p>	<p>Professional indemnity protects lot owners by ensuring that any claims against a manager for negligence can be met. In the absence of regulations setting a minimum amount of insurance, individual owners corporations could still require their managers to hold a certain amount of insurance, but would need to manage and monitor this themselves.</p>

Each of these is discussed in more detail below.

The proposed Regulations also give effect to the Act in a number of other areas.

- The proposed Regulations set out details necessary for parts of the Act to be functional (i.e., by prescribing a form to be used for proxy authorisations, prescribing information to be included in an owners corporation certificate and statement accompanying a certificate). These provisions are considered to be of a minor technical nature and are not considered in detail in this RIS.

<sup>14</sup> Section 151.

<sup>15</sup> Sections 150, 146.

<sup>16</sup> Section 119.

- The proposed Regulations also set infringement offences and corresponding penalties for breaches of some sections of the Act.<sup>17</sup> In Victoria, infringements are used to address the effect of minor law-breaking with minimum recourse to the machinery of the formal criminal justice system and, as a result, often without the stigma associated with criminal judicial processes, including that of having a criminal conviction. It is proposed that the current infringements be maintained. These are set out in Table 5 below.

**Table 5: Proposed infringement amounts<sup>18</sup> (in penalty units, and penalty amount for 2018-19)**

Offence	Penalty under the Act	Infringement amount proposed in the Regulations
Failure of a manager to return records upon termination (s. 127)	60 penalty units (\$9,671)	6 penalty units (\$967)
Acting as a manager without being registered (s. 178)	60 penalty units (\$9,671)	6 penalty units (\$967)
Failure to notify CAV if there is a material change in details after an application has been lodged (s. 188)	10 penalty units (\$1,612)	1 penalty unit (\$161)

The Attorney-General's Guidelines to the *Infringements Act 2006* provide that the level of the infringement penalty must be set as a significantly lesser proportion of the maximum penalty to maintain the 'bargain' in the infringements system and the incentive inherent in that bargain. As a general rule, the infringement penalty should be no more than approximately 25 per cent of the maximum penalty for the offence. Given the prescribed infringement offences are relatively minor, a penalty of 10 per cent of the maximum provided under the Act was deemed to be appropriate. The Infringements System Oversight Unit within the Department of Justice and Regulation was consulted on the infringements. It has advised the infringements are consistent with the Attorney-General's Guidelines on infringements.

- The proposed Regulations specify the letterbox or other indication of owners corporation to be displayed for owners corporations—see section 2.6 below.
- The proposed Regulations add a new regulation to assist owners corporations to manage committee membership where committee members do not attend committee meetings—see section 2.7 below.
- The proposed Regulations set fees (application fee, annual registration fee and late lodgement fee) that allow CAV to recover the costs to government of administering the registration of owners corporations managers. Fees are discussed further below—see section 2.8 below.

<sup>17</sup> The Act provides that some offences may be designated as infringement offences within the meaning of the *Infringements Act 2006*. This allows enforcement officers to issue infringement notices and allow the offender to pay a fine for minor breaches in lieu of pursuing the alleged offence in court. The infringement amounts are therefore less than the full penalty amount that would usually apply. Infringement offences make it easier to enforce the Act; without infringement offences, all breaches of the Act would need to be pursued through court which would divert government resources.

<sup>18</sup> In 2018-19, one penalty unit equals \$161.19 (see <http://www.gazette.vic.gov.au/gazette/Gazettes2018/GG2018S145.pdf>). Penalty units are increased each year in line with the Treasurer's rate determined under the *Monetary Units Act 2004*. Penalties are rounded to the nearest dollar.

## 2.1 Audit of financial statements

Audits of financial statements provide assurance to lot owners (and prospective lot owners) that:

- the funds in the owners corporation account and the fees paid by members are sustainable, and
- the financial management of the owners corporation is being done adequately, without risk of mismanagement or non-disclosure of relevant information.

Audits of financial statements improve transparency, thereby promoting good governance of the owners corporation. Audited financial statements also provide a clear basis for determining financial impacts where there are disputes about transactions within an owners corporation, which may assist in resolving disputes quicker.

In the absence of any regulations, there would be no requirement for any owners corporations to have their accounts audited. All owners corporations may voluntarily elect to have their financial statements audited, however this would require agreement from a majority of lot members. Typically, it is likely that some owners corporations would voluntarily have their financial statements audited, particularly the larger owners corporations (with a large number of lots or a high level of revenue) where lot owners recognise the higher levels of risk associated with their size. However, if a large owners corporation does not have their accounts audited, it may be difficult for an individual lot owner who is concerned about the accuracy of the financial statements to convince other lot owners of the benefit of an audit, as some lot owners may consider the costs of an audit unnecessary—lot owners may not be in a position to best assess the value of an audit as they are not aware of the potential risks associated with relying on incorrect financial information.

## 2.2 Preparation of maintenance plans

All owners corporations may prepare a maintenance plan for the property, but prescribed owners corporations must prepare a maintenance plan.<sup>19</sup> The Act sets out what is to be included in a maintenance plan:

- the major capital items<sup>20</sup> anticipated to require repair and replacement within the next 10 years
- the present condition or state of repair of those items
- when those items or components of those items will need to be repaired or replaced
- the estimated cost of the repair and replacement of those items or components
- the expected life of those items or components once repaired or replaced, and
- any other prescribed information.

The purpose of a maintenance plan is that for items that are likely to require a large amount of expenditure at some point in the future and over a period of time, provision can be made in annual contributions to a fund, so that the maintenance of assets can occur when it is needed, without the need to call on members to pay extraordinary fees at short notice.

Inadequate planning of property maintenance could lead to more extensive remedial work when problems are discovered, increasing costs to lot owners, and is generally associated with the need for calls on lot owners to make additional ad-hoc extraordinary contributions to meet the costs.

In a submission to the Consumer Property Law Review, RRVV (a peak body for retirement villages, which are usually run as owners corporations) has previously noted that long-term maintenance expenditure for a retirement village of up to 50 lots can be in the range of \$500,000 to \$1.5 million

---

<sup>19</sup> Section 36.

<sup>20</sup> 'Major capital item' includes a lift, an air conditioning plant, a heating plant, or an item of a prescribed class.

per annum. They note that therefore, inefficiency in managing such expenditure can cost the resident body a large sum of money.

Other submissions to the Review from institutional bodies representing owners and managers stated that many owners corporations are failing to plan, set aside funds and undertake strategic works to meet maintenance needs in a timely and cost-efficient manner. Buildings are being neglected, which can have serious financial and personal consequences for residents; or alternatively, lot owners are forced to cover the cost of unfunded breakdowns through special levies, often amounting to tens of thousands of dollars. Without funds set aside on a regular ongoing basis, the burden of breakdowns is not spread equitably between past, present and future lot owners.

An example from an individual lot owner:

*We support [requiring mandatory funding of mandatory maintenance plan] strongly. We believe that it would reduce disputes when there are major items of maintenance to be undertaken. Some owners initially refused to pay a recent levy to cover the cost of painting the buildings. Painting had been neglected to the point that balustrades were rusting and woodwork rotting. Much woodwork had to be replaced. This would not have occurred if the painting had been done in 2008, when it was recommended by a building engineer. Without a maintenance fund there was not the will to organise quotes and raise a levy. A properly constituted maintenance fund would have ensured that the work was undertaken, without dispute, and when it was due to be done. A further levy to cover repairs to asphalt wear and tear that is causing a safety hazard met with similar resistance from some owners.*

*Another important reason for establishing a maintenance fund is equity. The levies for the painting and the asphaltting totalled \$3104 – a significant amount. And three of our flats had been sold just before the levies were struck. This meant that three new owners bore an unfair financial burden, causing one at least financial hardship.*

And another anecdote:

*A number of major unexpected maintenance costs subsequently arose, including replacement of the lifts, major works to address concrete cracking and spalling, and so on. As a consequence of the underfunding, maintenance contributions more than doubled for the following three years (causing a high level of complaint from owners), and major works had to be deferred until adequate funding was available.*

A submission to the Review from two academics with a research interest in consumer affairs cited a major research project undertaken by City Futures Research Centre at the University of New South Wales, which looked at managing major repairs in strata schemes. While the research relates to New South Wales, it is likely indicative of similar problems in Victoria. The researchers found that the level of satisfaction that lot owners experience can be affected by the way in which funds are raised to pay for capital expenditure. The findings included:

*... levels of dissatisfaction with the way in which funds were collected in their strata schemes were high amongst survey respondents. The most common concern related to owners' unwillingness to pay higher levies, resulting in insufficient funds in the budget and the consequent collection of special levies. Indeed, almost a third of survey respondents indicated that major repairs and maintenance was funded by special levies in their scheme. The second most common concern related to a lack of, or poor, planning regarding major repairs and maintenance funding and a lack of information provided to owners about these issues by the executive committee and/or managing agent ...*

*One-third of survey respondents considered their owners corporation or managing agent had not budgeted adequately for major capital works. The major concern was the striking of special levies to cover the costs of major capital works. Indeed, a third of all respondents noted that major capital works were often funded by special levies ... Approximately one-third of the 80 respondents who answered the question regarding the adequacy of their sinking funds responded positively. The most common reason given for considering their sinking fund adequate was that a good sinking fund plan was in place. There was, however, also a common concern over the inadequacy of some sinking funds, particularly when they did not fully cover major capital works costs...*

The problem is likely to be more serious for larger, complex structures in owners corporations (e.g., with lifts and intricate internal infrastructure that comprises common property) and less of an issue for smaller or simpler structures. A greater risk is also for new lot owners who could not have known of any latent defects when they purchased their lot. Submissions to the Issues Papers provided a few examples where new lot owners were facing financial challenges from unforeseen special maintenance levies because of the lack of understanding and willingness of owners corporations to plan for the future.

After disputes with a manager, disputes over maintenance of common property is the next highest source of complaint to CAV, at around 30 per annum (representing 11 per cent of complaints over the past five years). Concerns with poor planning for maintenance are unlikely to be reflected in the VCAT disputes data, as disagreement as to the planning for maintenance is not a breach of any rules that would give rise to a claim. Again, the majority of lot owners dissatisfied with the approach to maintenance planning may be in a position to take action within the owners corporation (e.g., vote in favour of a voluntary maintenance plan and fund, most likely after experiencing the consequences of poor planning) or may simply be putting up with the consequences.

### 2.3 Model rules

All owners corporations have the power to make their own rules, if the rules relate to the matters set out in Schedule 1 of the Act.<sup>21</sup> The Act also provides for the making of Model Rules, that may be adopted by owners corporations.

Section 139 of the Act provides that if an owners corporation does not have its own rules in relation to a particular matter, the Model Rule in relation to that matter will be deemed to apply.

The Model Rules are not mandatory. While they apply as default rules if no corresponding rule has been agreed by the owners corporation, it is relatively easy for an owners corporations wishing to have no rules in a particular area to make a *de minimus* rule to apply instead of the Model Rule. For example, the Model Rule on parking of vehicles could be replaced by a rule that confirms the ability for cars to be parked on common property.

The Model Rules therefore serve two purposes:

- to provide a simple set of principles-based rules to promote good governance and efficient administration of owners corporations, which an owners corporation can adopt without the need to develop their own rules, and
- to provide a default set of basic rules that apply should an owners corporation not have their own rules in place (e.g., if an owners corporations not aware of the need to make rules, or cannot agree on a particular rule).

The problem addressed by prescribing Model Rules is firstly—and by far the more significant—to provide a more efficient means for owners corporations to have a set of rules in place. It is estimated, based on feedback from stakeholders on the experience of managers of owners corporations, that the cost of developing a set of rules can range from \$1,500 for simple rules that deal with some of the matters included in the Act, to up to \$5,000 or \$10,000 for more complex sets of rules. These costs include legal costs for drafting the rules, the manager's time in arranging for a vote on the rules, and member's time on voting for the rules.

Model Rules are most likely to be adopted for smaller owners corporations. SCAV believes that 95 per cent of owners corporations use the Model Rules. This would be virtually all owners corporations with up to 10 lots, and most owners corporations with between 10 and 50 lots. On

---

<sup>21</sup> Rules cannot unfairly discriminate against a lot owner or an occupier of a lot; or be otherwise inconsistent with any Act or Regulations.

average, the savings to these owners corporations from not having to develop their own rules is around \$2,200 per owners corporation (which is generally a once-off cost).

Nearly all owners corporations with more than 50 lots make at least some of their own rules instead of adopting the Model Rules. For these owners corporations, the Model Rules provide a meaningful benchmark of good practice, guiding the owners corporation to consider whether alternative rules are better or worse than the Model Rules.

## 2.4 Access to records, register and certificates

The Act provides that owners corporations information can be obtained through purchasing an owners corporation certificate, accessing the owners corporation register, and accessing other records required to be maintained by an owners corporation.

### ***Owners Corporation Certificate***

The current Regulations lists 16 key matters that the certificate must contain, such as current lot fees, repairs and maintenance work that may incur additional charges, insurance details, total funds held by the owners corporation, and minutes of the most recent annual general meeting. This aligns with the matters that the Act requires to be prescribed under section 151(4)(a).

Section 151 of the Act provides that any person may apply to an owners corporation for a certificate. The application must be in writing and accompanied by a fee determined by the owners corporation, which must not exceed the prescribed fee.

### ***Owners Corporation Register***

Section 143(3) of the Act requires an owners corporation to maintain an owners corporation register (the Register). Section 148 of the Act lists the ten matters that an owners corporation must keep through the Register, including the owners corporation plan number and address, total lot liability and lot entitlements, details of any notices or orders served on the owners corporation, and insurance policy details.

Under section 150, an owners corporation must make the Register available for inspection on request by a lot owner, mortgagee of a lot, purchaser of a lot, or the representative of such persons. Owners corporations must make the Register available for inspection at any reasonable time, and access is free of charge.

If a person, entitled to inspect the Register, wishes to obtain a copy of the Register or any part of the Register, they must pay a fee determined by the owners corporation, which must not exceed the prescribed maximum fee.

### ***Owners Corporation Records***

Under section 144 of the Act, there are 19 types of records that an owners corporation must keep, including records pertaining to minutes of meetings, accounting records, financial statements and leases and licences to and from the owners corporation.

Section 146 requires an owners corporation, on request by a lot owner, mortgagee of a lot, purchaser of a lot or the representative of such persons, to make the records of the owners corporations available to that person for inspection at any reasonable time, free of charge.

The owners corporation may provide a copy of any record of the owners corporation upon the request of a person entitled to inspect the records, and on payment of a fee. This fee is determined by the owners corporation and must not exceed the prescribed maximum fee.

In many cases, an owners corporation manager or other delegated individual maintains information on behalf of all lot owners. A problem that arises from such an arrangement is the monopoly of information that some individuals have about the owners corporation. In many cases, this monopoly power is held by an owners corporation manager (or delegated individual), who as part of their

duties, maintains information on behalf of all lot owners, and as such becomes the only available source of particular information about the owners corporation and associated common property.

The issue of certificates is common. Certificates are generally required as part of the information provided by vendors when selling a property, under section 32 of the *Sale of Land Act 1962*. There are around 60,000 sales of properties subject to an owners corporation each year—in general all of these would require a certificate to be provided.<sup>22</sup> In the majority of cases, the owners corporation is self-managed, and the certificate is provided by the member designated as responsible for maintaining the records of the owners corporation. It is estimated that around 15,000 to 17,000 transfers of property would require a certificate to be provided by a registered manager, which would generally attract a fee.

No systemic issues have been raised regarding self-managed owners corporations where a volunteer may provide services such as preparing the certificate. However, in previous review of these fees, stakeholders including the LIV, AIC, and REIV, voiced concerns regarding excessive fees charged by owners corporation managers. Consultation highlighted specific concerns in relation to excessive charges being made for priority/urgent requests, multiple certificates, and providing more current information contained in a certificate. In these contexts, excessive charges can be considered to reduce or prohibit fair and reasonable access to owners corporation information. Furthermore, such charges may not accurately reflect the cost to owners corporations of efficiently providing this information.

Owners corporation managers have previously advised that very rarely is a copy of the Register or other owners corporation records requested. Where requests are received, these typically occur when the committee wishes to obtain financial information or when an issue or dispute exists for example, between lot owners or with the committee.

Most owners corporation managers advised that their business did not charge a fee for obtaining copies of information. Some owners corporation management businesses provide an online portal where information can be obtained at no cost. Others may impose a nominal paper and photocopy fee.

Some owners corporation management businesses have computerised systems that can extract the Register as a whole, while others do not have the same function with their computerised systems and so would require individual collation of all the items specified to be maintained on the Register under the Act. A few owners corporation managers advised that when a request is received to obtain information, usually time is taken to understand the issue or concern that gave rise to that request and then the relevant information is extracted for the applicant.

## 2.5 Professional indemnity insurance

Professional indemnity insurance protects practitioners against claims of negligence made against them by a client. This insurance covers the costs and expenses of defending a legal claim, as well as any damages payable. If owners corporation members suffer a loss that can be attributed to the manager's failure to uphold professional standards, the manager risks being sued for a breach of professional duty. Professional indemnity insurance will cover them for this potential loss thereby protecting lot owners.

Professional indemnity insurance provides a benefit to lot owners (or others with a right of action against a manager) by ensuring that claims of negligence can be assessed and compensation can be paid. Without insurance, a manager may not have the financial resources to meet claims.

---

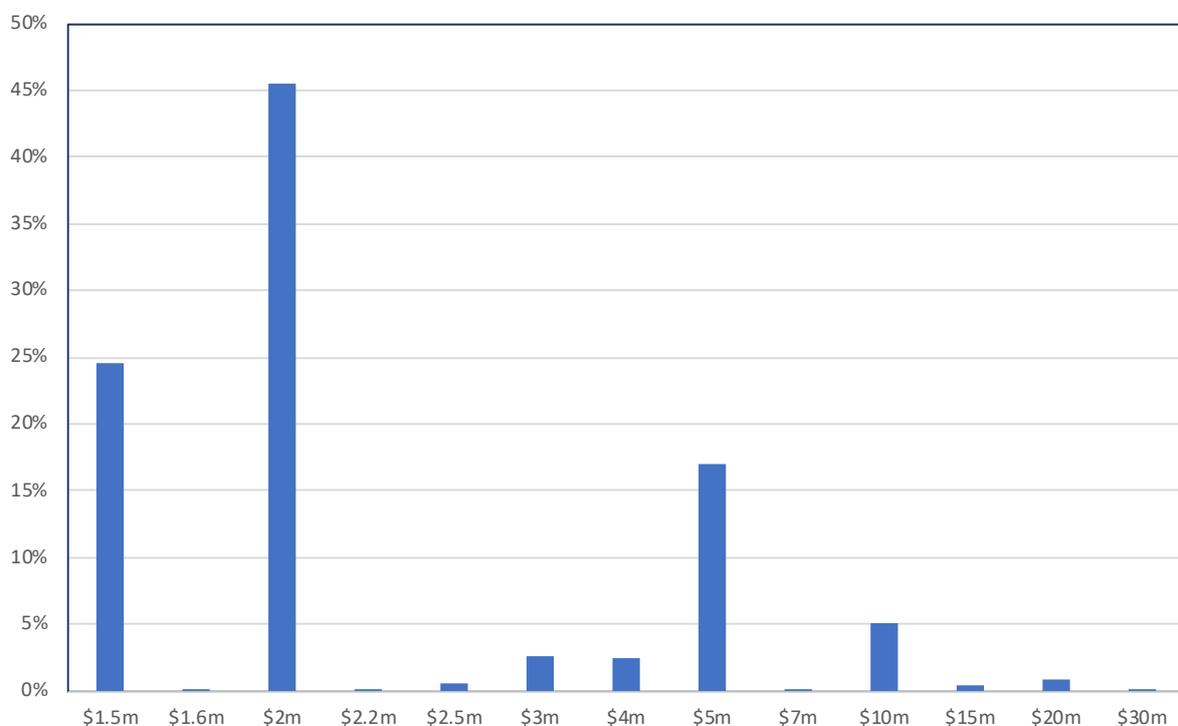
<sup>22</sup> The *Sale of Land Act 1962* allows a vendor to provide the relevant information without a certificate if it is known to the vendor, however it is understood this is unlikely to be true in most cases, and a certificate would need to be obtained.

Professional indemnity insurance is a common requirement for registered practitioners, ranging from plumbers and builders through to legal practitioners. The purpose is to provide a safety net to meet claims from consumers. Even self-regulated industries—such as accountants and architects—generally require their members to hold a minimum level of insurance.

Section 119(5) of the Act requires registered owners corporation managers to have professional indemnity insurance of an amount of at least that prescribed in regulations. In the absence of the Regulations, there is effectively no requirement for managers to hold professional indemnity insurance.

There are clear business operational and reputational reasons why a manager would voluntarily take out indemnity insurance. The current Regulations set a minimum insurance cover for claims up to \$1.5 million in any one year, however, most of the current 685 registered managers hold insurance cover above this amount. Three-quarters of the managers hold insurance above the minimum amount, suggesting that this would continue regardless of the Act requiring insurance. It is assumed that even some of the 25 per cent of managers that hold insurance at the minimum level would continue to do so (or at least hold some level of cover) in the absence of the legal requirement.

**Figure 2: Current professional indemnity insurance held by owners corporations managers**



*Source: information collected by CAV from registered managers*

Advice from SCAV indicated that claims against professional indemnity insurance are frequent. Over the past 24 months, up to one-third of managers have had a claim met from their insurer—these are mostly small amounts (and often compensation paid in settlement of a dispute rather than proceeding to court), but without the insurance in place, the aggrieved parties (usually lot owners) would not have been able to receive any money.

While only a minority of managers hold insurance at the minimum level, and only some of these would likely hold no insurance if there was no requirement to do so, this still represents a large amount of individual lot owners that are at risk of their claims not being met where the manager does not have funds to meet claims.

This RIS considers what level of minimum insurance is appropriate.

## 2.6 Letterbox or other indication of owners corporation

As owners corporations are separate legal entities that can contract in their own name and be sued, it is essential that third parties can identify the legal entity. This may be for contractors that are engaged by the owners corporation to provide services at the property, visitors and guests who may enter the property, or neighbours who may wish to complain about nuisance created from the property.

There is nothing in the Act to facilitate identifying the owners corporation, or its contact information, other than conducting a search of the Register of Titles (which involves a time cost and a financial cost (fee)).

The current Regulations require owners corporations with a registered manager to place a sign setting out the manager's name and postal address either near the letterboxes or at the main entrance to the building. For other owners corporations, there must be a letterbox with a sign with its postal address. This need not be a separate letterbox, but can be the letterbox of a lot owner who is nominated as responsible for the mail of the owners corporation.

## 2.7 Committees

Owners corporations with 13 or more lots are required to appoint a committee.<sup>23</sup> The owners corporation may delegate any functions or powers to the committee to make ordinary<sup>24</sup> decisions on behalf of the owners corporation. The intention of committees is to provide a more efficient way for decisions to be made about the day-to-day operations of the owners corporation, such as approving repairs and maintenance, without the need to convene the entire owners corporation members.

The Act sets out the requirements for appointment to a committee, including the number of members and eligibility, the conduct of meetings and votes, arrangements for proxies and the keeping of records.

Committee members are appointed or removed only by a full meeting of the owners corporation, unless there is a casual vacancy caused by the resignation of a committee member.

A problem has emerged where members appointed to committee fail to attend meetings of the committee, without prior notice or explanation. Stakeholders have noted that such non-attendance can frustrate the effective and efficient operation of the committee by preventing the committee from reaching its required quorum, meaning that decisions cannot be made. SCAV has identified examples where committees have been unable to make important decisions for more than six months because of this behaviour. Currently, the committee members cannot be removed unless a meeting of the full owners corporation membership is held and a special resolution made.

## 2.8 Fees for registered managers

CAV administers the Regulations, including the registration scheme for owners corporations managers. In doing so, the activities CAV undertakes include:

- considering applications to determine whether a person is eligible to be registered as a manager
- monitoring a person's ongoing eligibility to continue as a registered manager (e.g., to consider changes to the membership of corporations, and to confirm ongoing insurance coverage)
- maintaining a register of managers, and

---

<sup>23</sup> See section 100 of the Act. Owners corporations with less than 13 lots may appoint a committee if they choose, however it is understood that this is not common.

<sup>24</sup> The delegation cannot include any decisions that require unanimous or special resolution, or a resolution at the annual general meeting.

- assisting owners corporation members in relation to complaints regarding managers (e.g., where a manager is not meeting their statutory duties under s. 122 of the Act, or advice on removal of a manager).

These activities involve a cost to CAV that arises because of the ability under the Act for persons to become registered managers. These managers are the beneficiaries of the CAV activities, or at least, the permission given to these people to operate a business as a manager is the reason these activities are necessary.

The setting of fees in Victoria is guided by the *Cost Recovery Guidelines*, published by the Department of Treasury and Finance, and formally incorporated into the *Victorian Guide to Regulation* as relevant to making fees in regulations.

The *Cost Recovery Guidelines* set out principles underpinning cost recovery arrangements. In setting fees, it is important to recognise the principles of economic efficiency, equity, and effectiveness. The Guidelines establish a whole-of-government framework thereby ensuring that cost-recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy.

The Guidelines are based on the principle that properly designed cost-recovery arrangements can deliver both equity and efficiency benefits to the community. See Appendix B for the cost recovery principles.

The Government's policy is that, in the absence of other policy objectives, fees and levies should be set to fully recover an agency's costs of undertaking the task. That said, there are cases when full cost-recovery may not be appropriate on equity or effectiveness grounds.

The fee amounts and projected revenue for the 2018-19 financial year, is set out in the following table.

**Table 6: Fees for managers collected by CAV**

Fee	Fee amount (fee units)	Fee amount (\$) amount in 2018-19) <sup>25</sup>	Number applied <sup>26</sup>	Total revenue expected in 2018-19
Registration application fee	14.26	\$206.10	84	\$17,312
Annual registration fee	10.01	\$144.60	601	\$86,905
Late lodgement fee	1	\$14.50	60	\$870
<b>TOTAL</b>				<b>\$105,087</b>

A detailed review of costs has not been undertaken, as the Government has been considering changes to the Act which may change the specific activities undertaken by CAV and the level of resources needed to undertake them. This would warrant a reconsideration of both the level and the structure of fees. For this reason, a detailed reassessment of fees for registered managers was not undertaken for this RIS.

In preliminary consultation for this RIS, no issues or concerns were raised by stakeholders in relation to the current fees. The fees are considered to be very low compared to the costs of engaging a manager. Spread over the number of individual lots that are managed by the average registered manager, the total fee revenue amounts to 60 cents per lot.

<sup>25</sup> For 2018-19, one fee unit equals \$14.45. The value of a fee unit is set under the *Monetary Units Act 2004*, and is generally increased from 1 July each year to take account of increased costs. Fees are rounded to the nearest 10 cents.

<sup>26</sup> This uses the actual numbers for each category from 2017-18, assuming a similar number will occur each year.

### 3 Objectives

The main purpose of the Act is to provide for the management, powers and functions of owners corporations.

As a concept, owners corporations are intended to be an efficient and effective mechanism for lot owners to exercise their rights and meet their responsibilities in relation to common property. The objectives of any regulatory framework should, therefore, inherently aim to provide for efficient coordination and administration of these rights and responsibilities, while protecting the individual property rights themselves.

Drawing on the nature of the problems discussed in the previous chapter, the objectives of the proposed Regulations are to:

- protect the rights and interests of lot owners in relation to common property, including protecting against avoidable financial exposure, and
- support and promote good governance of owners corporations.

## 4 Feasible options and their costs and benefits

### 4.1 Prescribed owners corporations—mandatory audits and maintenance plans

The options for mandating audits of financial statements and preparation of maintenance plans are considered together, as the only way these can be mandated is by defining a class of owners corporations that will be the ‘prescribed’ owners corporations for the purposes of the Act.

The current Regulations define prescribed owners corporations as any owners corporation that:

- has more than 100 lots, OR
- levies annual fees in excess of \$200,000 in a financial year.

Alternative options would involve varying the thresholds for the number of lots and/or the annual fees revenue; or could consider having only one of the two criteria used for the definition.

Use of different criteria was considered not feasible or practical. The REIV has previously suggested that the trigger based on the number of lots should be limited to only ‘occupiable’ lots, so that lots such as car parking places and storage areas are not used to trigger the requirements. Such a definition is currently not possible without changes to the Act. Therefore, the number of lots and the total fee revenue represent the best proxies for the level of financial risk related to the accuracy of financial statements and likely maintenance costs.

#### 4.1.1 Base case

In the absence of mandating audits of financial statements, it is assumed the following percentages of owners corporations would continue to have their financial statements audited.

**Table 7: Audits of financial statements in the base case (per cent of owners corporations in each class)**

No. of lots/Annual fee revenue	Less than \$100,000	\$100,000 to \$200,000	\$200,000 to \$300,000	More than \$300,000
2-10 lots	0%	25%	50%	55%
11-50 lots	0%	25%	50%	55%
51-100 lots	10%	25%	50%	75%
101-150 lots	35%	50%	65%	80%
More than 150 lots	60%	70%	80%	90%

Similarly, in the absence of mandating preparation of maintenance plans, it is assumed that the following percentages of owners corporations would continue to prepare maintenance plans.

**Table 8: Preparation of maintenance plans in the base case (per cent of owners corporations in each class)**

No. of lots/Annual fee revenue	Less than \$100,000	\$100,000 to \$200,000	\$200,000 to \$300,000	More than \$300,000
2-10 lots	0%	0%	25%	40%
11-50 lots	0%	0%	25%	40%
51-100 lots	0%	20%	30%	50%
101-150 lots	10%	40%	50%	55%
More than 150 lots	20%	45%	55%	60%

These assumptions were developed following consultation with industry representatives, that drew on the experience of individual owners corporations across the size classes (in terms of lots and revenue).

#### 4.1.2 Costs of mandating audits and maintenance plans

The following tables set out the estimated cost to owners corporations of mandating audits and maintenance plans (in aggregate across all owners corporations) for various thresholds of lot numbers and fee revenue that could be used to define the prescribed class. The number affected refers to the number of owners corporations that would be required to do something (i.e., audit accounts or prepare a maintenance plan) that they otherwise would not do.

**Table 9: Incremental costs (per annum) of mandating audits of financial statements**

Total revenue/ No. of lots	No. of lots only		over \$100,000		over \$200,000		over \$300,000	
	No. affected	Total cost	No. affected	Total cost	No. affected	Total cost	No. affected	Total cost
0 lots (all OCs)	84,897	\$79,124,909	<i>854</i>	<i>\$873,391</i>	<i>214</i>	<i>\$252,460</i>	<i>38</i>	<i>\$61,168</i>
10 lots	14,723	\$11,939,490	15,021	\$12,225,528	14,758	\$11,973,141	14,723	\$11,939,490
50 lots	988	\$950,035	1,452	\$1,370,175	1,085	\$1,034,796	994	\$956,882
100 lots	248	\$296,946	946	\$965,391	403	\$454,324	266	\$320,190
150 lots	112	\$147,074	893	\$912,351	282	\$326,484	135	\$179,022

*NB: the italicised figures correspond to defining prescribed owners corporations by fee revenue alone, not also number of lots.*

See Appendix A for the assumed cost to each type of owners corporation for obtaining an audit.

In other words, continuation of the current definition of prescribed owners corporations would affect 403 owners corporations (i.e., by requiring them to conduct an audit that they otherwise would not do), at a total cost of \$454,324 per annum.

Similarly, for maintenance plans:

**Table 10: Incremental costs (per annum) of mandating preparation of maintenance plans**

Total revenue/ No. of lots	No. of lots only		over \$100,000		over \$200,000		over \$300,000	
	No. affected	Total cost	No. affected	Total cost	No. affected	Total cost	No. affected	Total cost
0 lots (all OCs)	85,353	\$69,619,812	<i>1,195</i>	<i>\$1,782,268</i>	<i>383</i>	<i>\$775,825</i>	<i>102</i>	<i>\$313,795</i>
10 lots	15,074	\$13,396,272	15,478	\$13,719,638	15,127	\$13,438,450	15,074	\$13,396,272
50 lots	1,275	\$2,354,739	1,909	\$2,864,284	1,419	\$2,472,440	1,283	\$2,363,868
100 lots	437	\$1,007,146	1,347	\$2,054,716	670	\$1,325,552	468	\$1,075,306
150 lots	256	\$643,863	1,273	\$1,922,524	515	\$1,031,792	300	\$747,274

*NB: the italicised figures correspond to defining prescribed owners corporations by fee revenue alone, not also number of lots.*

See Appendix A for the assumed cost to each type of owners corporation for preparing a maintenance plan.

This suggests that the costs of continuing the current definition of prescribed owners corporations would affect 670 owners corporations,<sup>27</sup> with a total incremental cost of \$1.3 million per annum.

The benefits of audits of financial statements are not readily quantifiable, but include:

<sup>27</sup> The owners corporations affected by the requirement for maintenance plans may or may not overlap with those affected by the requirement for audits of financial statements. As such, it is not possible to estimate the total number affected by both requirements in combination.

- increased confidence for lot owners in owners corporations in their owners corporation's financial statements and reduced scope for financial mismanagement and fraud, resulting in a reduction in disputes and the enhancement of the liveability of these buildings
- improved transparency about financial management
- reduced loss to lot owners from fraud or other financial mismanagement, and
- reduced costs of pursuing or otherwise responding to suspected fraud (e.g., VCAT, investigations, replacement of managers), and decrease in disputes about the use of funds.

The benefits of mandating maintenance plans are similarly not readily quantifiable, but include:

- ensuring that repair and maintenance is done efficiently (i.e., when needed to avoid higher costs at a later time), thereby mitigating delays to required repairs, which can lead to larger maintenance and repair costs in the future (which are imposed on another generation of lot owners)
- ensuring that sufficient funds are available at the time of replacement or repair and, therefore, ensuring that buildings governed by owners corporations are appropriately maintained
- spreading the cost over many years and generations of lot owners rather than the alternative of a one-off, large special levy on one generation of lot owners that may cause financial hardship for some lot owners, or borrowing by the owners corporation
- avoiding/mitigating sale costs for lot owners that suddenly have to sell due to unaffordable repairs to damage discovered in common property, and
- minimising the risk of lot owners avoiding their obligations for long-term maintenance by selling their lot before a repair or replacement is required and thus transferring the cost to unsuspecting purchasers.

While it is possible to separately consider which owners corporations should have their financial statement audited and which owners corporations should prepare a maintenance plan, the intention of the Act is to prescribe a single set of owners corporations to which both requirements will apply. In light of the cost impacts, primary consideration has been given to the trade-offs associated with the mandating of maintenance plans, given these have the largest cost per owners corporation and are expected to affect a larger number of owners corporations for each threshold option.

It is considered that the nature of the benefits, and in particular the importance of transparency and accountability in the sector, justifies applying the definition in *at least* its current form—i.e., owners corporations with more than 100 lots or more than \$200,000 in fee revenue.

Defining prescribed owners corporations by using only the number of lots (the current threshold of more than 100 lots) or only the level of fee revenue (the current threshold of more than \$200,000) could broadly halve the incremental cost of the regulations from the current arrangements. While this would reduce the cost, it would fail to adequately target the risks associated with 'large' owners corporations.

Using revenue as a criterion for defining the prescribed owners corporations is considered a relevant proxy for the level of financial risk and exposure that could result from inaccurate financial statements (e.g., mismanagement or fraud), or lack of a maintenance plan (e.g., more likely to be larger unplanned expenses). However, there is a risk that if revenue is the only criterion, owners corporations may keep fees below the threshold in order to avoid the requirements, which then may exacerbate the risks that are intended to be avoided (e.g., not enough funds being set aside for future maintenance needs). Therefore, it is considered that the number of lots—while not a perfect proxy for the risk involved for individual owners corporations—remains an important basis for

determining which owners corporations should be prescribed. For these reasons, retaining both the number of lots and the level of fee revenue as thresholds for prescribed owners corporations is preferred.

Consideration was also given to changing the threshold number of lots and revenue. While increasing the thresholds for prescribed owners corporations would reduce the incremental costs of the regulations, it was decided that the risk of financial consequences to lot owners from not having an agreed maintenance plan would be too great, based on the types of examples discussed in chapter 2.

Through the Consumer Property Law Review, a number of submissions were received by lot owners, owners corporations, registered managers, and industry representatives, arguing that the class of prescribed owners corporations should be widened to include a larger group of owners corporations. The most common suggestion was to lower the threshold for the number of lots from 100 to 50. This would extend the benefits of audits and maintenance plans to a much wider group of lot owners, but comes at significant additional cost.

As such, it is considered that changes to the thresholds would be more appropriately considered in the context of the Review of the Act, which provides an opportunity to introduce a more risk-based approach to the overall regulation of owners corporations.

Therefore, on balance, it is proposed to continue with the existing definition of prescribed owners corporations.

#### 4.1.3 Minor addition to requirements for financial statements and maintenance plans

The Act requires all owners corporations with more than two lots to keep proper financial accounts and prepare annual financial statements (section 33, 34). A prescribed owners corporation must prepare its financial statements in accordance with the standards required by the regulations. The current Regulations do not specify any particular standards for the preparation of financial statements.

Stakeholder feedback indicates that most financial statements for prescribed owners corporations are prepared by certified or chartered accountants. Therefore, they would be prepared in accordance with Australian accounting standards.<sup>28</sup> Where a professional accountant is not used, registered owners corporations managers prepare the statements based on their own experience as bookkeepers, or utilise in-house accounts staff. These accounts may be prepared consistent with Australian accounting standards, although there is also some existing industry guidance<sup>29</sup> on the preparation of financial accounts that departs from Australian accounting standards in certain areas.

In the interests of transparency, it is important that financial information of different owners corporations is readily comparable, particularly where this information has been subject to external audit. The requirement under the Act to prepare annual financial statements creates a clear expectation among consumers—who would not normally understand the difference between accounting treatments—that owners corporations' financial information is prepared on a consistent and comparable basis.

It is therefore proposed to require all financial statements prepared for prescribed owners corporation to be prepared in accordance with Australian accounting standards. Australian accounting standards have been selected as there are no real alternative accounting standards (other than those used overseas) that could be mandated as a complete set of standards, and stakeholder feedback indicates that many owners corporations would already be using Australian accounting standards.

---

<sup>28</sup> Accounting standards made by the Australian Accounting Standards Board (AASB).

<sup>29</sup> The guidance is general advice on some types of transactions common to owners corporations, but is not considered to be a complete or alternative accounting standard.

This change is not expected to have any material cost increase from the current arrangements, on the basis that any prescribed owners corporations that do not currently conform with Australian accounting standards can readily adopt any changes necessary, as these will be done by owners corporations managers who would be familiar with accounting concepts and standards. Industry groups will also be able to update any relevant guidance material at relatively minor cost to owners corporations on how to treat items for accounting purposes.

The Act also requires maintenance plans to set out all major capital items anticipated to require repair and replacement within the next 10 years. The term ‘major capital item’ is not exhaustively defined in the Act, but some specific examples—a lift, an air conditioning plant, a heating plant—are listed as being included within the meaning. The Act also allows the Regulations to prescribe other classes of items to be included within this definition.

Based on feedback from industry representatives, it is proposed to prescribe the following additional classes of major capital item: any common property structures (including the roof, stairwells, balustrades and window frame); any common property services such as shared water, gas and sewer pipes, pumps, drains, electrical and telephony infrastructure; and any common property assets such as fences, pools and water tanks.

Preliminary consultation indicates that these assets would be regarded as major capital items within the ordinary meaning of that word. Indeed, feedback from industry stakeholders suggests that most owners corporations already include such items in their maintenance plans.

It is estimated that adding these items to maintenance plans would only cost a total of \$84,000 per annum in aggregate for all owners corporations.<sup>30</sup> This is a small additional cost, compared to the benefits of ensuring that maintenance plans adequately provide for the repair and replacement of common property.

## 4.2 Model rules

In the base case, there would be no Model Rules. All owners corporations would need to individually consider what rules to put in place. As outlined in section 2.3, in the absence of Model Rules, the costs to the smaller owners corporations (less than 50 lots) of developing their own set of rules would cost on average around \$2,200.<sup>31</sup>

Therefore, the costs imposed on small owners corporations if the Model Rules were no longer in place, and each of these owners corporations needed to develop its own rules, could amount to \$180 million, which would be a once-off cost in 2018-19 as the new rules were developed. There would also be an ongoing cost for new owners corporations that would no longer be able to adopt the Model Rules and spend money to develop their own rules. There are around 1,000 new owners corporations each year with less than 50 lots, implying that having no Model Rules would result in additional costs of \$2.2 million per annum to develop rules.

However, there would be some small owners corporations (potentially a large share) that do not develop their own rules. The absence of the Model Rules would instead lead to poor governance and disputes between members about the running of these owners corporations.

For larger owners corporations (more than 100 lots), the base case would involve no additional cost, as their existing individual rules would continue (SCAV considers that virtually all owners corporations with more than 100 lots have their own rules).

---

<sup>30</sup> This is based on 420 owners corporations having to include additional assets in their maintenance plans, at an additional cost for these owners corporations of \$2,000 (on average) spread over ten years. The other owners corporations are assumed to already have these assets included (within the general interpretation of ‘major assets’) or do not have these assets. These estimates were based on consultation with industry stakeholders.

<sup>31</sup> This is an average cost across owners corporations based on feedback from industry stakeholders on specific examples of individual owners corporations.

It is understood that for owners corporations with between 50 and 100 lots, there is a mix of owners corporations that rely on the Model Rules (which would incur a cost if they choose to develop their own rules if the Model Rules are no longer prescribed), and those that already have their own rules (and therefore unaffected if there were no Model Rules). The proportion of these that use the Model Rules is not known with any reliability. Further, the costs to owners corporations of this size of developing their own rules is likely to be higher than the \$2,200 assumed for small owners corporations, as the size of the owners corporations likely requires more matters to be covered, and additional effort to reach agreement with a larger group. Owners corporations with between 50 and 100 lots are also assumed to be more likely to develop their own rules in the absence of Model Rules, compared to smaller owners corporations.

#### 4.2.1 Option 1: remake the Regulations with the existing Model Rules

If the Model Rules continue as they are now, there would be no significant impact to most owners corporations. All existing owners corporations would be unaffected, as their current arrangements would continue: owners corporations that rely on the Model Rules would continue to do so at no change from the status quo, and those that have their own rules would continue to do so at no additional cost or benefit.

However, compared to the base case, nearly all small owners corporations (less than 50 lots) and a proportion of medium owners corporations (50-100 lots) would be better off as they would not need to develop their own rules.

#### 4.2.2 Option 2: remake the Regulations with expanded Model Rules

The current Model Rules do not cover all of the matters for which the Act allows rules to be made. In preliminary consultation, stakeholders suggested a range of additional matters for which Model Rules should be made. Some of these were beyond what is allowed under the Act, are already dealt with in the Act itself, or were considered to (in the form proposed) unreasonably infringe on the personal property rights of owners.

The only suggested additional Model Rules that are considered feasible and practical within the current scope of the Act are:

- providing that a committee may appoint members to a sub-committee without reference to the owners corporation, and
- requiring an owner to obtain approval before making changes to the external appearance of their lot (and that the owners corporation cannot unreasonably withhold approval), and to provide notice when undertaking any renovations or works that may affect the common property and/or other lot owners enjoyment.

These additional Model Rules should enhance the good governance of owners corporations and reduce disputes where relevant actions are already occurring without a suitable rule in place.

There may be a cost implication of expanding the Model Rules to include a new matter, depending on the owners corporation. Larger owners corporations with their own rules are likely to be unaffected, as the new Model Rules cover matters for which they are expected to already have their own rules in place.

Smaller owners corporations that currently rely on the Model Rules have two options: they can accept the new Model Rules to also apply, in which case there is no additional cost to them (although the lot members will become subject to the new rule), or they can decide they do not want to adopt the new Model Rules and pass a resolution replacing the new Model Rules with a *de minimus* alternative (e.g., a rule that permission is not required for changes to external appearance).

It is expected that most small owners corporations will take the first option, as consultation with industry groups suggests the new rule is reasonable and would be helpful to most owners corporations.

Should a very small number of small owners corporations decide that they do not want to adopt the new rule (but keep the existing Model Rules), this would only require a very brief entry in the minutes at their next meeting, being at a very low cost. Therefore, a small owners corporation could, at effectively zero cost, not become subject to the new Model Rules if they determine that it would impose a burden on them with no offsetting benefit.

This suggests that the overall impact of an expanded set of Model Rules will have broadly the same impact on costs as retaining the same Model Rules—i.e., compared the base case, will avoid costs to small and some medium owners corporations of up to \$180 million.

However, Option 2 will see more owners corporations having in place rules that specifically deal with the matters of controlling the external appearance and notice of renovations, which is expected will reduce disputes in this area. There is no evidence on the number of disputes in these areas, or the costs of such disputes. However, the proposed new Model Rules provide an appropriate safeguard should disputes occur—which stakeholders have indicated do occur at least anecdotally—while allowing any owners corporation to decide to not adopt the new rule at effectively zero cost if they determine the costs of the new rule outweigh the benefits for their particular owners corporation.

#### 4.2.3 Preferred outcome

Based on the above discussion, Option 2—to remake the Regulations with an expanded set of Model Rules—is the preferred approach. This should be a cost saving to owners corporations overall, while at the same time promoting good governance and administration, and reducing disputes.

### 4.3 Capping fees for access to owners corporation information

In general, owners corporations should be able to recover the actual costs of providing the prescribed information to individuals who request it. This is to avoid the owners corporation (funded by individual owners) effectively subsidising the cost of providing information. However, there is a need to balance this ability to recover costs against ensuring that interested parties can obtain information at reasonable cost.

Setting a maximum fee prevents the risk of some owner corporations charging excessively high amounts for providing information. The maximum fees an owners corporation may charge for providing certificates and copies of the register or other records was considered in detail in 2014, when the current Regulations were amended to update these maximums. The options considered are set out in *Owners Corporations Amendment Regulations 2014 Regulatory Impact Statement*, published in June 2014. That RIS considered a range of options for the design, structure and amount of maximum fees, and assessed those options in a comprehensive analysis against the criteria of:

- the extent to which the option provides fair and reasonable access to owners corporation information
- the extent to which costs to owners corporations of efficiently providing owners corporation information have been accurately reflected in fees charged
- the complexity and difficulty of implementation.

That RIS also compared the maximum fees with similar arrangements in other Australian states and territories.

During the consultation period on the 2014 RIS, no submissions were received in opposition to the proposed maximum fees.

The current prescribed maximum fees commenced in October 2014. As the analysis in that RIS is relatively recent, and is still considered to be applicable, it is not proposed to re-examine the options at this time, and the proposed Regulations will maintain the current arrangements.

No evidence exists to indicate that the current prescribed maximums are causing any unexpected impacts since the 2014 review was undertaken. In preliminary consultation with stakeholders prior to the current RIS, no concerns were raised about the operation of the current prescribed maximum fees.

The proposed Regulations, therefore, continue the current arrangements.

- Maximum fees for an owners corporation certificate are set out in Table 11 below.

**Table 11: Maximum fees for certificate (in fee units, and fee amounts for 2018-19)<sup>32</sup>**

	<b>Basic fee for certificate</b>	<b>Additional fee for each additional certificate by same person</b>
Issued within 2 business days	17.35 fee units (\$250.70)	9.54 fee units (\$137.90)
Issued within 3 to 5 business days	14.46 fee units (\$208.90)	7.95 fee units (\$115.00)
Issued within 6 to 10 business days	9.64 fee units (\$139.30)	5.3 fee units (\$76.60)

- The maximum fee for a copy of the register is 3.03 fee units, plus 20 cents per page if copies are requested to be printed.
- The maximum fee for a copy of any other record held by the owners corporation is, for the first record requested, 1.15 fee units, plus 20 cents per page if copies are requested to be printed; or, where additional records are requested in relation to the same request, \$7.60 plus 20 cents per page for copies requested to be printed.

#### 4.4 Professional indemnity insurance for managers

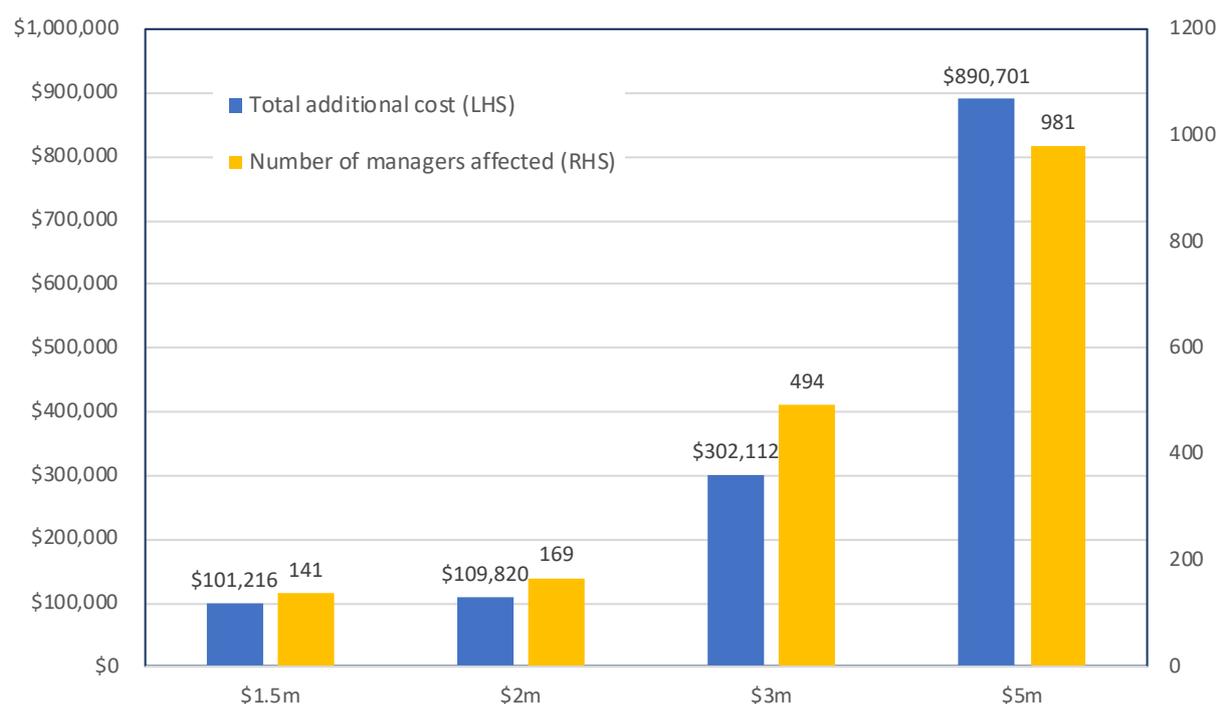
The feasible options for professional indemnity insurance are limited to setting a particular minimum level, compared to a base case of having no minimum prescribed (effectively having no requirement to hold a sufficient level of insurance).

As most managers already hold insurance at various levels of cover about the current minimum, the incremental cost of setting a minimum level of cover is small at the lower end, but increases disproportionately if the required level of cover is increased, as a greater share of managers would need to increase their level of cover.

The following figure shows the number of managers affected by setting a minimum level of cover at a range of levels (i.e., that would be forced to increase their level of cover compared to the base case), and the total incremental cost to the sector of each option.

<sup>32</sup> For 2018-19, one fee unit equals \$14.45. The value of a fee unit is set under the *Monetary Units Act 2004*, and is generally increased from 1 July each year.

**Figure 3: Incremental costs of prescribing professional indemnity insurance levels**



The calculation of these estimates is set out in Appendix A.

The options shown in the above figure are broadly to illustrate the trend of impacts if the level of prescribed insurance is increased. Some stakeholders have recommended that the minimum level of insurance cover be increased to at least \$5 million.

Claims at the level of even \$1.5 million are rare, but like other industries where professional indemnity insurance is required, the level of cover provides a safety net for the rare and exceptional cases, rather than seeking to meet average of most claims. Stakeholder feedback indicates there has been at least one claim in recent years of over \$1 million. Further, insurers are best placed to assess the likelihood of large claims and price insurance products accordingly—for example some insurers charge the same price for a \$2 million cover as they do for a \$1.5 million cover, with the average price difference being around \$50 per policy. This suggests that insurers believe the additional level of cover is unlikely to be called on in nearly all cases. The main driver for costs between each of the above options is less about the cost per policy, which increases only slightly as the level of cover increase, but by the compounding impact of the number of managers affected by the small price increases.

Based on this analysis, it is considered that there is only a small cost difference between setting the prescribed level of cover at \$1.5 million and \$2 million (incremental costs of \$101,000 per annum compared to \$110,000 per annum). In other words, increasing the minimum level of cover from the current level would involve only a small cost difference (around 25 per cent of managers would need to increase their level of cover, at an increased cost of around 4.5 per cent each), but would provide a stronger safety net should any large claims be made. Spread over the number of individual lot owners that are in owners corporations with the average registered manager, the cost difference represents only 5 cents per annum to increase the effective cover from \$1.5 million to \$2 million. This is a reasonable trade-off between cost and benefits. On the other hand, increasing the minimum insurance beyond \$2 million represents larger increases in costs with no clear additional benefits (it is unlikely that claims would ever exceed \$2 million). Increasing the level of cover to \$2 million would also bring Victoria into line with New South Wales, making it more feasible for managers who operate in both states to hold one insurance policy.

An alternative option to prescribing any insurance amount in the Regulations would be to let individual owners corporations determine what insurance cover they require when engaging a manager, and require evidence of insurance to be provided prior to appointment. This approach is not favoured for a number of reasons.

- Protections may be reduced for some consumers that would actually prefer a higher level of assurance, as the level of insurance for a manager would be determined by the majority of the owners corporation, which may be at the expense of the minority. That said, individual owners corporations are already able to require their manager to hold insurance higher than the prescribed minimum.
- It is likely to be less efficient for individual owners corporations to undertake this task. CAV already registers managers who receive a fee or reward for their work, with the primary purpose of the register to ensure that the manager is eligible to act as a manager. Confirming an appropriate level of insurance is already done as part of this process.
- Managers may alter or cease to hold insurance after their appointment, which may not be known to the owners corporation members. Setting insurance requirements in the Regulations requires the manager to notify CAV of any changes in insurance, with penalties for failure to do so.

#### 4.5 Letterboxes and indication of owners corporations

It is proposed to continue the current arrangements, which require:

- for owners corporations with a manager, a sign setting out the manager's name and postal address to be placed either near the letterboxes or at the main entrance to the building, and
- for owners corporations without a manager, a letterbox with a sign with its postal address.

It is assumed that all existing owners corporations already comply with this requirement, and therefore, are unaffected by the continuation of the requirements. There are around 1,700 new owners corporations registered each year. Only a small number of these would engage a registered manager, although the exact number is not known.

Regardless of whether the owners corporation has a manager or not, it is assumed that compliance with the rule would cost around \$20 per owners corporations, being a possible cost range for producing a sign with the required information. There is no minimum specification for the size or quality of the sign, and compliance could be achieved even cheaper if desired, such as a hand-written notice. Therefore, the assumed average cost is likely an upper limit.

The total cost of this requirement is therefore up to \$34,000 per annum. This is a small cost impost, and is justified by the benefits associated with allowing persons (such as service providers and contractors, neighbours, visitors and guests) to be able to easily identify the identity of the owners corporation and contact the manager or responsible person.

Alternatives to these requirements were considered, but it was decided that this is the simplest means by which the information can be easily provided to a person attending the property. An alternative, such as a central searchable database, would involve considerable administrative effort to establish (including for all existing owners corporations), and would require third parties to individually undertake the search at a different time to obtain the relevant information.

Consideration was also given to whether the specific information required to be displayed was still relevant. While communications are now more frequently via email, it is considered that a primary purpose of being able to identify the legal entity may be for legal matters, and as such a physical postal address remains appropriate. It is noted that signs for registered managers routinely include email addresses, website URLs and phone numbers in any case.

## 4.6 Committees

To deal with the problem of absentee committee members frustrating the effective and efficient operations of committees, it is proposed to supplement the arrangements for the management of committees already included in the Act by specifying in the Regulations that:

- if a committee member has been absent from 25 per cent of committee meetings within a six-month period, without prior notification, then
- the committee may pass a resolution removing the member from the committee.

If such a resolution is passed, it would give rise to a casual vacancy, which must be dealt with under section 104 of the Act. The remaining committee members may co-opt another lot owner (or a person holding a proxy for a lot owner) to be a member, or, if there are at least three remaining members, proceed without filling the vacancy.

It is important to note that this provision could only be triggered if the absence is without prior notice, and even then, the committee may consider any relevant explanations before taking action to remove the member.

As such, while the 25 per cent trigger may be a low threshold (possibly triggered by missing only one meeting, depending on the frequency of meetings of the committee), there remains an expectation that notice would be given prior to the meeting, or otherwise the committee can consider if removal is appropriate under the circumstances. It is considered the 25 per cent within six-month trigger is appropriate to ensure that any frustration that is occurring from absent members does not extend more than six months. A higher threshold (e.g., 50 per cent of meetings in a six-month period) would entrench operational issues arising from non-attendance, making it difficult for committees to make decisions and perform their functions under the Act.

Initial consultation with industry representatives supports the trigger threshold to be set at 25 per cent within a six-month period.

This is not expected to lead to any additional costs to owners corporations, and will assist with the effective and efficiency functioning of committee to be able to make decisions in the interests of the owners corporation to which they belong.

These changes will only affect owners corporations with committees, which is mandatory for all owners corporations with 13 or more lots. Around 13 per cent of owners corporations—around 11,000—fall into this category. While owners corporations with less than 13 lots may have a committee, it is understood this is not common. The Act allows a committee to be made up of between 3 and 12 members (to be decided by the owners corporation) and the committee may meet as frequently as it considers necessary. Therefore, the proposed rule on absentee committee members will have more importance to some owners corporations than others.

## 5 Summary of impacts

### 5.1 Aggregate impact of proposed Regulations

The total costs attributable to the proposed Regulations are set out below.

**Table 12: Summary of costs of proposed Regulations**

Regulation	Costs (annual, for 2018-19)	Costs of life of Regulations (10 years) (NPV)*
Prescribing owners corporations for the purposes of mandating audits of financial statements and preparation of maintenance plans	\$1,779,877	\$17,115,988
Prescribing a minimum level of professional indemnity insurance for owners corporations managers	\$109,820	\$1,056,072
Fees for registered managers	\$105,087	\$1,010,557
Letter box and postal address signs	\$34,000	\$326,957
<b>TOTAL</b>	<b>\$2,028,784</b>	<b>\$19,509,574</b>

\* 10-year figure has assumed increase in the number of owners corporations and managers of 2 per cent year, based on average growth in recent years. Net present value has used a real discount rate of 4 per cent.

These measures are expected to result in benefits, as described in the previous chapter, which are not readily quantifiable.

Other elements of the proposed Regulations have no direct cost, but are likely to result in benefits.

**Table 13: Benefits of proposed Regulations**

Regulation	Benefit
Remaking Model Rules (with additional Model Rules in a small number of areas)	Continuing Model Rules avoids a significant cost to smaller owners corporations that would otherwise develop their own rules. Even if there was not an avoided cost (e.g., if the owners corporation would not have any rules in the absence of Model Rules), the Model Rules improve good governance and reduce disputes.
Maximum fees for owners corporations certificates, and copies of the register and other records	By setting a fee cap, the regulations ensure that people can have reasonable access to copies of these documents.

Overall, the benefits of the proposed Regulations are expected to be greater than the costs.

## 5.2 Groups affected

The groups affected by the proposed Regulations are owners corporations (and their individual members), and registered managers of owners corporations.

- The mandatory requirement to audit financial statements is expected to affect 403 owners corporations (or 0.5 per cent of all owners corporations).
- The mandatory requirements to prepare maintenance plans is expected to affect 670 owners corporations (or 0.8 per cent of all owners corporations).
- Prescribing minimum level of professional indemnity insurance is expected to affect 169 registered managers (or 25 per cent of all managers).
- Prescribed fees affect all registered managers (685).
- Setting Model Rules will benefit 81,500 owners corporations (95 per cent) as these owners corporations currently use the Model Rules, and if the Model Rules are not included in the proposed Regulations, these owners corporations would need to spend time and cost to develop their own rules, or would operate without rules, which could increase poor decisions or disputes.
- Setting maximum fees that can be charged by owners corporations to obtain a certificate or copies of the register or other records will potentially benefit any interested party that requires access to these documents, but in particular will ensure that certificates (which are generally required for all sales of properties, being around 60,000 individual lots per annum).

## 5.3 Impact on competition

This section considers whether the proposed Regulations are likely to lead to a material decline in competition in any market. Victoria is party to the Competition Principles Agreement, which requires that any new primary or subordinate legislation should not restrict competition unless it can be demonstrated that the Government's objectives can only be achieved by restricting competition and that the benefits of the restriction outweigh the costs. This is the 'competition test' also to be applied to remaking sunseting regulations. It is noted that the competition assessment does not preclude any option being preferred, but requires that any decrease in competition should ensure that the benefits outweigh the costs and that the desired outcomes can only be achieved by affecting competition.

In some cases, regulation can affect competition by preventing or limiting the ability of businesses and individuals to enter and compete within particular markets. The primary cost of a restriction on competition is that it can reduce the incentives for businesses to act in ways that benefit consumers, that can result in lower innovation and productivity, reduced choice of products and/or higher prices.

The types of regulations that may be regarded as affecting competition either directly or indirectly are set out in the following table.

**Table 14: Types of regulation that may affect competition**

Category of restriction	Examples
Barriers to entry or exit	<p>Governs the entry and exit of firms or individuals into or out of markets</p> <p>Creates or protects a single buyer or seller</p> <p>Limits the number of firms that can carry out a particular activity</p> <p>Restricts who can own or operate a business</p> <p>Gives existing firms access to information that is not available to new market participants</p>
Conduct restrictions	<p>Controls prices or production levels</p> <p>Restricts certain activities, for example, advertising</p> <p>Imposes requirements on product quality</p> <p>Restricts the quality, quantity or location of goods and services available</p> <p>Restricts access to inputs used in the production process, for example, infrastructure and employment standards; restricts the price of or type of inputs used in the production process</p> <p>Limits consumer access to particular goods or services</p> <p>Restricts advertising and promotional activities</p>
Increase in business costs	<p>Imposes specific levies and/or imposts on a particular industry</p> <p>Imposes high administrative or compliance costs</p>
Advantage for some firms over others	<p>Imposes requirements on certain firms, but not on competing firms</p> <p>Sheltering some activities from the pressures of competition</p> <p>Advantages government businesses over the private sector</p> <p>Gives one firm access to infrastructure, but not others</p>

Source: Based on *Assessment against the Competition Test*, guidelines published by the New South Wales Department of Finance, Services and Innovation, 2017, with additional examples from *Legislation Impact Assessment Guidelines* published by Tasmanian Department of Treasury and Finance December 2016.

Some regulatory arrangements may impose more than one restriction, and some restrictions may fall into more than one category.

### 5.3.1 Do the proposed Regulations restrict competition?

Owners corporations are not, of themselves, considered businesses for the purpose of a competition assessment. Therefore, most of the impacts on owners corporations from the proposed Regulations do not have an impact on competition. However, owners corporations may be involved in commercial transactions, that may have consequences for competition.

The proposed Regulations will restrict the ability of owners corporations to choose a price above the maximum prescribed price for providing services to other parties, for providing an owners corporation certificate, and copies of the Register and owners corporation records. The proposed Regulations will also restrict the ability of owners corporations to choose to offer a wider range of products that vary in terms of time of provision (for example, a further premium for same-day provision of certificates).

The proposed Regulations also create barriers to carrying on a business as a registered manager, through the requirement to hold a minimum level of professional indemnity insurance and the setting of fees to apply for registration and an annual registration fee.

### 5.3.2 Are the restrictions on competition justified?

In relation to limiting the price an owners corporation can charge for services, the proposed Regulations aims to balance the market power wielded by owners corporations in the provision of owners corporation information, and as such, address inefficiencies in the market arising from the lack of robust competition in the sector. The proposed Regulations seek to prescribe maximum fees based on the costs to an owners corporation of efficiently providing a certificate, copies of the Register and other owners corporation records. Given the absence of strong competitive forces, i.e., there is no alternative source of any given owners corporation certificate, the proposed Regulations specify fees that aim to more accurately reflect a fair market price.

Therefore, while the proposed Regulations are considered to restrict an owners corporation's ability to choose a price for providing owners corporation information and affect incentives to develop new products or services, this is not considered to negatively impact on competition as the existing market for owners corporation information is not considered competitive and the proposed Regulations seek to address this market weakness.

For registered managers, the levying of fees for being registered is consistent with the *Cost Recovery Guidelines*—setting a price that reflects the cost to the community of ensuring managers are adequately regulated in consistent with economic principles of efficiency and equity, and should therefore promote competition overall.

The minimum level of professional indemnity insurance is considered justified as the benefits—ensuring a reasonable safety net should large claims arise—justify the relatively small cost of the requirement.

## 5.4 Impact on small business

As noted above, owners corporations are not considered to be businesses. Nevertheless, the design of the proposed Regulations has given special consideration to ensuring burdens are not placed unnecessarily on small owners corporations. Most owners corporations, and nearly all small owners corporations, will be entirely unaffected in terms of additional burden by the proposed Regulations. On the other hand, measures that provide a clear benefit—the prescribing of Model Rules—are likely to have a disproportionate impact in favour of smaller owners corporations.

There are no data readily available to determine what proportion of registered managers are, or could be considered, small businesses. It is likely that most registered managers could be considered small businesses. However, the costs imposed on managers by the proposed Regulations are not considered material in the overall costs of being a manager, and are therefore not considered to have a particular burden on small businesses.

## 6 Implementation and Evaluation

### 6.1 Implementation

The proposed Regulations are planned to commence on 2 December 2018, the day before the current Regulations are due to expire. New regulatory requirements may be communicated to stakeholders via a variety of means, including updates to the CAV website, social media and direct communications with owners corporations, owners corporation managers and relevant peak bodies.

No special transition arrangements are required, as most of the proposed Regulations carry on the current arrangements, or only provide different arrangements that will be relevant going forward (e.g., preparation of maintenance plans and use of Australian accounting standards will be relevant at the next time these are done, typically at the annual general meeting).

The increase in the level of professional indemnity insurance for registered managers will be checked at the time of their renewal of registration, which will occur progressively over a 12-month period.

Stakeholders are invited to comment on whether there may be any other parts of the proposed Regulations that may require transitional arrangements.

It is not anticipated that the majority of stakeholders (lot owners and owners corporation managers) will be required to perform any specific actions ahead of commencement to ensure compliance once the new requirements come into effect. However, maintenance plans may need to be updated to capture additional capital items prescribed under the proposed Regulations, if they do not already include such items. Prescribed owners corporations may also need to revise their process for preparing annual financial statements to ensure they are in compliance with Australian accounting standards.

No significant changes are anticipated to CAV systems as a result of the proposed Regulations. Compliance with the proposed Regulations will be ensured primarily through CAV's monitoring and enforcement activity undertaken as a part of general day-to-day operations.

Enforcement activity in relation to the proposed infringements will be undertaken through the business as usual activity of CAV's Regulatory Services Division.

### 6.2 Evaluation

A robust evaluation strategy is essential to ensure that regulation is practical, effective, relevant to the sector and aligned with government objectives on an ongoing basis.

The objective of the evaluation will be to assess the ongoing effectiveness of the proposed Regulations in supporting the effective administration of owners corporations in Victoria, as well as to identify any emerging issues which may require government attention.

As noted in this RIS, potential amendments to the Act and associated legislation governing the owners corporation sector in Victoria are currently being considered as part of the Consumer Property Law Review. Should a Bill be passed by the Parliament of Victoria, it is intended that an evaluation of the proposed Regulations would be undertaken following the commencement of any amendments to determine if any further changes are required to support the operation of the revised Act. This would also consider the appropriateness of current prescribed fees in light of any new requirements. The precise timing for the commencement of such an evaluation will be dependent on the commencement date for any amendments to the Act.

Separate to any review arising due to the passage of any amendments to the Act, an evaluation of the proposed Regulations would also be undertaken by the end of 2022. Whilst a review of subordinate legislation is only usually undertaken prior to the ten-year sunset period in the event of

significant changes, given the number of provisions that will have remained unchanged since the current Regulations were first made, it is important that an evaluation is undertaken to ensure they remain fit for purpose. This will enable any lessons learned from their initial years of operation to be incorporated into the proposed Regulations for their remaining lifespan.

The effectiveness of owners corporations legislation is currently evaluated through sector data collection, complaints monitoring and regular stakeholder consultation, both formal and informal. However, it is recognised that there are currently a number of information gaps which could limit the effectiveness of an evaluation undertaken using existing sources.

In order to support the effective monitoring of the proposed Regulations, key institutional stakeholders will be consulted to improve the base level of quantitative and qualitative information available. CAV will work with stakeholders to better understand how many owners corporations rely exclusively on the Model Rules. CAV will also monitor the effectiveness of the reform package over time and identify emerging issues through key indicators, such as:

- the number of complaints made to CAV in relation to owners corporations
- the number of applications to VCAT's Owners Corporations List
- industry, CAV and VCAT data on owners corporations' disputes and the resolution thereof
- the number of owners corporation manager registrations and cancellations
- the number of infringement penalties issued
- feedback received via the CAV website and social media channels, and
- any other relevant data sources that may be identified post-implementation.

Ongoing consultation with a range of stakeholders, including institutional bodies such as SCAV, the REIV and Property Council of Australia, will be critical to evaluating the impact of the proposed regulations, including through activities such as the distribution of surveys or questionnaires and the identification of individual stakeholders who can provide more detailed information.

## Appendix A: Cost assumptions

### *Costs of audit of financial statements per owners corporation*

Table 15: Assumed costs of audits of financial statements

No. of lots/Annual fee revenue	Less than \$100,000	\$100,000 to \$200,000	\$200,000 to \$300,000	More than \$300,000
2-50 lots	\$800	\$800	\$800	\$1,100
51-100 lots	\$800	\$1,000	\$1,200	\$1,400
101-150 lots	\$1,000	\$1,100	\$1,400	\$1,600
More than 150 lots	\$1,000	\$1,200	\$1,500	\$2,000

### *Costs of audit of financial statements per owners corporation*

Table 16: Assumed costs of preparing maintenance plans

No. of lots/Annual fee revenue	Less than \$100,000	\$100,000 to \$200,000	\$200,000 to \$300,000	More than \$300,000
2-50 lots	\$800	\$800	\$800	\$1,100
51-100 lots	\$1,440	\$1,800	\$2,160	\$2,520
101-150 lots	\$1,800	\$1,980	\$2,520	\$2,880
More than 150 lots	\$1,800	\$2,160	\$2,700	\$3,600

## Professional indemnity insurance

Table 17: Price of professional indemnity insurance

Level of cover	Annual cost of premium
\$1m	\$1,100
\$1.5m	\$1,160
\$2m	\$1,211
\$3m	\$1,600
\$5m	\$2,200

[Based on a sample of quotes from insurance providers obtained in June 2018]

Table 18: Calculation of incremental costs for setting professional indemnity insurance level of cover

Group affected		Level of PI cover required			
		\$1.5m	\$2m	\$3m	\$5m
Managers who would hold no PI insurance under base case	Number of managers required to take insurance	84	84	84	84
	Cost of premium per manager	\$1,160	\$1,211	\$1,600	\$2,200
Managers who would hold less than \$1.5m under base case	Number of managers required to increase level of cover	56	56	56	56
	Additional cost of premium per manager	\$60	\$111	\$500	\$1,100
Managers that would hold at least \$1.5m but less than \$2m	Number of managers required to increase level of cover		28	28	28
	Additional cost of premium per manager		\$51	\$440	\$1,040
Managers that would hold at least \$2m but less than \$3m	Number of managers required to increase level of cover			326	326
	Additional cost of premium per manager			\$389	\$989
Managers that would hold at least \$3m but less than \$5m	Number of managers required to increase level of cover				487
	Additional cost of premium per manager				\$600
<b>Total number of managers affected</b>		<b>141</b>	<b>169</b>	<b>494</b>	<b>981</b>
<b>Aggregate additional cost of insurance</b>		<b>\$101,216</b>	<b>\$109,820</b>	<b>\$302,112</b>	<b>\$890,701</b>

## Appendix B: Cost Recovery principles

Cost-recovery is the recuperation of the costs of government-provided or funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs imposed by their actions. Cost recovery is a method of recovering all or some of the cost of particular activities undertaken by government agencies from individuals or businesses, based on the beneficiary pays<sup>33</sup> or impactor pays<sup>34</sup> principle. The concept 'user pays' will be used in this RIS to capture both situations.

The task of setting cost recovery fees/charges involves determining whether to recover costs from users or others who benefit; those whose actions give rise to it; or taxpayers more generally. Whether costs should be user pays or more generally funded by taxpayers will depend on the type of activity and the existence of any public benefits.

The *Cost Recovery Guidelines* apply to cost-recovery arrangements of government departments and agencies, and include the recovery of the costs incurred by the Government in providing goods and services.<sup>35</sup>

As stated in the *Cost Recovery Guidelines*, Victorian Government policy is that regulatory fees and user charges should generally be set on a **full cost-recovery basis**.<sup>36</sup> However, in some circumstances it may be desirable to use partial cost-recovery, for example where full cost-recovery is not consistent with other policy objectives of the Government.

When designed and implemented appropriately, the adoption of cost-recovery has the potential to advance efficiency and equity objectives. However, the Guidelines note that 'efficiency and equity considerations may need to be balanced against each other in determining the appropriate form of cost-recovery.'<sup>37</sup>

As noted, the Guidelines set as the main objective full cost-recovery from the activity. While this does not preclude partial cost-recovery or no cost recovery, it does set out conditions under which less than full cost-recovery would be considered appropriate. For example, less than full cost-recovery may be deemed appropriate where:

- merit goods are being provided or where activities generate benefits to unrelated third parties (positive externalities)
- objectives of income redistribution or social insurance are important
- concessions are deemed appropriate
- full cost-recovery may undermine innovation and product development
- the Government is providing goods and services on a commercial basis in competition with the private sector, and/or
- full cost charging could undermine other objectives.

---

<sup>33</sup> Those who benefit from the provision of a particular good or service should pay for it (Productivity Commission, 2001, p. XXI).

<sup>34</sup> This is where impactors meet the full costs of their actions, based on the view that those who create the need for a service should incur these costs.

<sup>35</sup> Government of Victoria, 2013, *Cost Recovery Guidelines*, Department of Treasury and Finance, Melbourne.

<sup>36</sup> *ibid.*, 2103, p. 7.

<sup>37</sup> *ibid.*, 2013, p. 6.

## Appendix C: Draft proposed Regulations

**Version No. 001**  
**Owners Corporations Regulations 2018**

---

**Version No. 001**

**Owners Corporations Regulations 2018**

**1 Objective**

The objective of these Regulations is to prescribe—

- (a) standards for the preparation of annual financial statements
- (b) information requirements for maintenance plans
- (c) the classes of prescribed owners corporations for the purposes of the **Owners Corporations Act 2006**;
- (d) certain insurance requirements relating to owners corporations;
- (e) when an existing owners corporation must establish an owners corporation register and information to be included on owners corporation certificates;
- (f) fees, costs and charges payable under the **Owners Corporations Act 2006**;
- (g) model rules for owners corporations;
- (h) offences in respect of which an infringement notice may be issued;
- (i) other matters authorised or required to be prescribed for the purposes of the **Owners Corporations Act 2006**.

**2 Authorising provision**

These Regulations are made under section 204 of the **Owners Corporations Act 2006**.

---

### 3 Revocation

The Owners Corporations Regulations 2007 are **revoked**.

### 4 Commencement

These Regulations come into operation on 2 December 2018.

### 5 Definitions

In these Regulations—

***Australian Accounting Standards*** means the standards issued by the Australian Accounting Standards Board for the purposes of the preparation of financial reports as in force for the time being;

***GST*** has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth;

***the Act*** means the **Owners Corporations Act 2006**.

### 6 Prescribed owners corporations

For the purposes of the definition of ***prescribed owners corporation*** in section 3 of the Act, the following classes are prescribed—

- (a) an owners corporation that levies annual fees in excess of \$200 000 in a financial year;
- (b) an owners corporation that consists of more than 100 lots.

### 7 Standards for annual financial statements

For the purposes of section 34(2) of the Act, the required standards for the preparation of annual financial statements by a prescribed owners corporation are the Australian Accounting Standards.

---

## **8 Prescribed information for maintenance plan**

For the purposes of the definition of *major capital item* in section 37 of the Act, the following classes of items are prescribed—

- (a) common property structures, including the roof, stairways, balustrades, and window frames;
- (b) common property services, such as shared water, gas and sewerage pipes, pumps, drains, electrical and telephony infrastructure;
- (c) common property assets, such as fences, pools, and water tanks.

## **9 Proxy authorisation**

For the purposes of section 87(3) of the Act, the prescribed form is the form in Schedule 1.

## **10 Membership of committee**

If a member of a committee is absent from 25 per cent or more of committee meetings held within any period of six months without having given prior notice of the member's absence to the committee, the committee may resolve that, despite section 103(5) of the Act, the member ceases to hold office as a committee member.

### **Note**

If a member ceases to hold office because of a resolution under this regulation, a casual vacancy will occur which may be dealt with in accordance with section 104 of the Act.

## **11 Professional indemnity insurance**

For the purposes of section 119(5) of the Act, the prescribed amount is \$2 000 000.

---

**12 Model rules**

For the purposes of section 139(1) of the Act, the rules set out in Schedule 2 are prescribed as model rules for an owners corporation.

**13 Maximum fee for copy of owners corporation record**

For the purposes of section 146(3) of the Act, the prescribed maximum fee for a copy of any record of an owners corporation is the total of—

- (a) in respect of the first record requested at any one time—
  - (i) 1.15 fee units; and
  - (ii) if a printed copy of the electronically provided record is also requested, 20 cents per page; and
- (b) in respect of each additional record provided in relation to the same request—
  - (i) \$7.60; and
  - (ii) if a printed copy of any additional record electronically provided is also requested, 20 cents per page.

**14 Maximum fee for copy of owners corporation register**

For the purposes of section 150(3) of the Act, the prescribed maximum fee for a copy of the register or any part of the register of the owners corporation is the total of—

- (a) 3.03 fee units; and
- (b) if a request is also made for a printed copy of the electronically provided register or a part of the register, 20 cents per page.

---

## **15 Maximum fee for owners corporation certificate**

- (1) For the purposes of section 151(2) of the Act, the relevant prescribed maximum fee to accompany an application for an owners corporation certificate is the total of—
  - (a) for an owners corporation certificate that is issued within—
    - (i) 2 business days after the owners corporation receives the application, 17.35 fee units; or
    - (ii) 3 to 5 business days after the owners corporation receives the application, 14.46 fee units; or
    - (iii) 6 to 10 business days after the owners corporation receives the application, 9.64 fee units; and
  - (b) for each additional application for an owners corporation certificate made by the same applicant paying a fee under paragraph (a) (but only if the owners corporations to whom the fees paid under paragraph (a) and this paragraph are managed by the same owners corporation manager) that is issued within—
    - (i) 2 business days after the owners corporation receives the application, 9.54 fee units; or
    - (ii) 3 to 5 business days after the owners corporation receives the application, 7.95 fee units; or
    - (iii) 6 to 10 business days after the owners corporation receives the application, 5.3 fee units.

- 
- (2) If a person uses an intermediary to apply for an owners corporation certificate, the relevant prescribed maximum fee that applies is—
- (a) in respect of the first application for an owners corporation certificate made on behalf of that person, the relevant prescribed maximum fee specified in subregulation (1)(a); and
  - (b) in respect of each additional application for an owners corporation certificate made on behalf of that person, the relevant prescribed fee specified in subregulation (1)(b) but only if—
    - (i) the person is the same person paying a fee in accordance with paragraph (a); and
    - (ii) the owners corporations to whom the fees are paid in accordance with paragraph (a) and this paragraph are managed by the same owners corporation manager.
- (3) In this regulation, *intermediary* means a person who obtains an owners corporation certificate on behalf of another person.

#### **16 GST payable**

If any GST is chargeable on the supply to which a maximum fee prescribed by these Regulations relates, the maximum fee is increased by an amount that is equivalent to that GST.

#### **17 Prescribed information for owners corporation certificate**

For the purposes of section 151(4)(a) of the Act, the prescribed information is—

- (a) the current fees for the lot for each quarter or annually or other period;

- 
- (b) the date up to which the fees for the lot have been paid;
  - (c) the total of any unpaid fees or charges for the lot;
  - (d) any special fees or levies which have been struck, and the dates on which they were struck and are payable;
  - (e) any repairs, maintenance or other work which has been or is about to be performed which may incur additional charges to those set out in paragraphs (a) to (d);
  - (f) in relation to the owners corporation's insurance cover—
    - (i) the name of the company;
    - (ii) the number of the policy;
    - (iii) the kind of policy;
    - (iv) the buildings covered;
    - (v) the building amount;
    - (vi) the public liability amount;
    - (vii) the renewal date.
  - (g) if the owners corporation has resolved that the members may arrange their own insurance under section 63 of the Act, the date of this resolution;
  - (h) the total funds held by the owners corporation;
  - (i) whether the owners corporation has any liabilities (in addition to any such liabilities specified in paragraphs (a) to (d)) and, if so, the details of those liabilities;

- 
- (j) details of any current contracts, leases, licences or agreements affecting the common property;
  - (k) details of any current agreements to provide services to lot owners, occupiers or the public;
  - (l) details of any notices or orders served on the owners corporation in the last 12 months that have not been satisfied;
  - (m) details of any legal proceedings to which the owners corporation is a party and any circumstances of which the owners corporation is aware that are likely to give rise to proceedings;
  - (n) whether the owners corporation has appointed, or has resolved to appoint, a manager and, if so, the name and address of the manager;
  - (o) whether an administrator has been appointed for the owners corporation, or whether there has been a proposal for the appointment of an administrator;
  - (p) the minutes of the most recent annual general meeting of the owners corporation.

**18 Prescribed statement to accompany owners corporation certificate**

For the purposes of section 151(4)(b)(ii) of the Act, the prescribed form of statement is the form in Schedule 3.

**19 Referral of disputes**

For the purposes of section 161(3) of the Act, the following persons and bodies are prescribed—

- (a) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;

- 
- (b) the Health Complaints Commissioner appointed under section 111 of the **Health Complaints Act 2016**;
  - (c) the Legal Services Board continued in existence under section 28 of the **Legal Profession Uniform Law Application Act 2014**;
  - (d) the Victorian Equal Opportunity and Human Rights Commission continued in existence under section 154 of the **Equal Opportunity Act 2010**;
  - (e) the Commonwealth Ombudsman established under the Ombudsman Act 1976 of the Commonwealth.

#### **20 Registration application fee**

For the purposes of section 180(2)(d) of the Act, the prescribed fee for an application for registration as a manager is 14.26 fee units.

#### **21 Annual registration fee**

For the purposes of section 183(1) of the Act, the prescribed annual fee for registration as a manager is 10.01 fee units.

#### **22 Late lodgement fee**

For the purposes of section 185(1) of the Act, the prescribed late lodgement fee is 1 fee unit.

#### **23 Letterbox or other indication of owners corporation**

- (1) Unless an owners corporation has appointed a manager, the owners corporation must maintain a letterbox and a sign labelled with its postal address.
- (2) The owners corporation address on the sign required under subregulation (1) must correspond with the address held on the register kept by the Registrar of Titles.

- 
- (3) It is sufficient compliance with subregulation (1) if the sign is placed on the letterbox of a lot owner who is responsible for the owners corporation's mail.
  - (4) If the owners corporation appoints a manager, the owners corporation must erect and maintain a sign giving the manager's name and postal address in a place clearly visible from either—
    - (a) the main group of letterboxes; or
    - (b) the main entrance to the land.

#### **24 Infringement offences and penalties**

- (1) Sections 127, 178 and 188 of the Act are prescribed as infringement offences for the purposes of section 203A(1) of the Act.
- (2) For the purposes of section 203A(3) of the Act, the infringement penalty for an offence—
  - (a) against section 127 or 178 of the Act is 6 penalty units;
  - (b) against section 188 of the Act is 1 penalty unit.

---

## Schedules

### Schedule 1

Regulation 9

#### OWNERS CORPORATION PLAN NO. PROXY FORM

Under regulation 6 of the Owners Corporations Regulations 2007,

I/We

of (address)

being the owner/s of lot/s          authorise

of

as \*my/\*our proxy

A \*to attend, speak and vote in person on \*my/\*our behalf up until  
\_\_\_/\_\_\_/\_\_\_ [*insert date until which proxy authorisation will be valid, up  
to a maximum period of 12 months*]

OR

\*to attend, speak and vote in person on \*my/\*our behalf at the annual or  
special general meeting of the owners corporation to be held on  
\_\_\_/\_\_\_/\_\_\_ [*insert date*]

OR

\*to vote for \*me/\*us and on \*my/\*our behalf at the ballot having a  
closing date of \_\_\_/\_\_\_/\_\_\_ [*insert date*]

OR

\*I/\*we direct the proxy to vote in relation to the following resolutions or  
matters as follows—

*[If relevant, set out specific instructions to your proxy concerning how  
to vote in relation to particular resolutions or matters]*

B \*To represent \*me/\*us on the committee of the owners corporation—

---

DATED

Signed (by member/s giving proxy)

Print Name

\*Delete if inapplicable

---

## **Schedule 2—Model rules for an owners corporation**

Regulation 12

### **1 Health, safety and security**

#### **1.1 Health, safety and security of lot owners, occupiers of lots and others**

A lot owner or occupier must not use the lot, or permit it to be used, so as to cause a hazard to the health, safety and security of an owner, occupier, or user of another lot.

#### **1.2 Storage of flammable liquids and other dangerous substances and materials**

- (1) Except with the approval in writing of the owners corporation, an owner or occupier of a lot must not use or store on the lot or on the common property any flammable chemical, liquid or gas or other flammable material.
- (2) This rule does not apply to—
  - (a) chemicals, liquids, gases or other material used or intended to be used for domestic purposes; or
  - (b) any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

#### **1.3 Waste disposal**

An owner or occupier must ensure that the disposal of garbage or waste does not adversely affect the health, hygiene or comfort of the occupiers or users of other lots.

---

## **2 Committees and sub-committees**

### **2.1 Functions, powers and reporting of committees and sub-committees**

A committee may appoint members to a sub-committee without reference to the owners corporation.

## **3 Management and administration**

### **3.1 Metering of services and apportionment of costs of services**

- (1) The owners corporation must not seek payment or reimbursement for a cost or charge from a lot owner or occupier that is more than the amount that the supplier would have charged the lot owner or occupier for the same goods or services.
- (2) If a supplier has issued an account to the owners corporation, the owners corporation cannot recover from the lot owner or occupier an amount which includes any amount that is able to be claimed as a concession or rebate by or on behalf of the lot owner or occupier from the relevant supplier.
- (3) Subrule (2) does not apply if the concession or rebate—
  - (a) must be claimed by the lot owner or occupier and the owners corporation has given the lot owner or occupier an opportunity to claim it and the lot owner or occupier has not done so by the payment date set by the relevant supplier; or
  - (b) is paid directly to the lot owner or occupier as a refund.

---

## **4 Use of common property**

### **4.1 Use of common property**

- (1) An owner or occupier of a lot must not obstruct the lawful use and enjoyment of the common property by any other person entitled to use the common property.
- (2) An owner or occupier of a lot must not, without the written approval of the owners corporation, use for his or her own purposes as a garden any portion of the common property.
- (3) An approval under subrule (2) may state a period for which the approval is granted.
- (4) If the owners corporation has resolved that an animal is a danger or is causing a nuisance to the common property, it must give reasonable notice of this resolution to the owner or occupier who is keeping the animal.
- (5) An owner or occupier of a lot who is keeping an animal that is the subject of a notice under subrule (4) must remove that animal.
- (6) Subrules (4) and (5) do not apply to an animal that assists a person with an impairment or disability.

### **4.2 Vehicles and parking on common property**

An owner or occupier of a lot must not, unless in the case of an emergency, park or leave a motor vehicle or other vehicle or permit a motor vehicle or other vehicle—

- (a) to be parked or left in parking spaces situated on common property and allocated for other lots; or
- (b) on the common property so as to obstruct a driveway, pathway, entrance or exit to a lot; or

- 
- (c) in any place other than a parking area situated on common property specified for that purpose by the owners corporation.

#### **4.3 Damage to common property**

- (1) An owner or occupier of a lot must not damage or alter the common property without the written approval of the owners corporation.
- (2) An owner or occupier of a lot must not damage or alter a structure that forms part of the common property without the written approval of the owners corporation.
- (3) An approval under subrule (1) or (2) may state a period for which the approval is granted, and may specify the works and conditions to which the approval is subject.
- (4) An owner or person authorised by an owner may install a locking or safety device to protect the lot against intruders, or a screen or barrier to prevent entry of animals or insects, if the device, screen or barrier is soundly built and is consistent with the colour, style and materials of the building.
- (5) The owner or person referred to in subrule (4) must keep any device, screen or barrier installed in good order and repair.

### **5 Lots**

#### **5.1 Change of use of lots**

An owner or occupier of a lot must give written notification to the owners corporation if the owner or occupier changes the existing use of the lot in a way that will affect the insurance premiums for the owners corporation.

##### **Example**

If the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes.

---

## **5.2 External appearance of lots**

- (1) An owner or occupier of a lot must obtain the written approval of the owners corporation before making any changes to the external appearance of their lot.
- (2) An owners corporation cannot unreasonably withhold approval, but may give approval subject to reasonable conditions to protect quiet enjoyment of other lot owners, structural integrity or the value of other lots and/or common property.

## **5.3 Requiring notice to the owners corporation of renovations to lots**

An owner or occupier of a lot must notify the owners corporation when undertaking any renovations or other works that may affect the common property and/or other lot owners' or occupiers' enjoyment of the common property.

## **6 Behaviour of persons**

### **6.1 Behaviour of owners, occupiers and invitees on common property**

An owner or occupier of a lot must take all reasonable steps to ensure that guests of the owner or occupier do not behave in a manner likely to unreasonably interfere with the peaceful enjoyment of any other person entitled to use the common property.

### **6.2 Noise and other nuisance control**

- (1) An owner or occupier of a lot, or a guest of an owner or occupier, must not unreasonably create any noise likely to interfere with the peaceful enjoyment of any other person entitled to use the common property.
- (2) Subrule (1) does not apply to the making of a noise if the owners corporation has given written permission for the noise to be made.

---

## 7 Dispute resolution

- (1) The grievance procedure set out in this rule applies to disputes involving a lot owner, manager, or an occupier or the owners corporation.
- (2) The party making the complaint must prepare a written statement in the approved form.
- (3) If there is a grievance committee of the owners corporation, it must be notified of the dispute by the complainant.
- (4) If there is no grievance committee, the owners corporation must be notified of any dispute by the complainant, regardless of whether the owners corporation is an immediate party to the dispute.
- (5) The parties to the dispute must meet and discuss the matter in dispute, along with either the grievance committee or the owners corporation, within 14 working days after the dispute comes to the attention of all the parties.
- (6) A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting.
- (7) If the dispute is not resolved, the grievance committee or owners corporation must notify each party of his or her right to take further action under Part 10 of the **Owners Corporations Act 2006**.
- (8) This process is separate from and does not limit any further action under Part 10 of the **Owners Corporations Act 2006**.

---

## **Schedule 3—Statement of advice and information for prospective purchasers and lot owners**

Regulation 18

### **What is an owners corporation?**

The lot you are considering buying is part of an owners corporation. Whenever a plan of subdivision creates common property, an owners corporation is responsible for managing the common property. A purchaser of a lot that is part of an owners corporation automatically becomes a member of the owners corporation when the transfer of that lot to the purchaser has been registered with Land Victoria.

If you buy into an owners corporation, you will be purchasing not only the individual property, but also ownership of, and the right to use, the common property as set out in the plan of subdivision. This common property may include driveways, stairs, paths, passages, lifts, lobbies, common garden areas and other facilities set up for use by owners and occupiers. In order to identify the boundary between the individual lot you are purchasing (for which the owner is solely responsible) and the common property (for which all members of the owners corporation are responsible), you should closely inspect the plan of subdivision.

### **How are decisions made by an owners corporation?**

As an owner you will be required to make financial contributions to the owners corporation, in particular for the repair, maintenance and management of the common property. Decisions as to the management of this common property will be the subject of collective decision making. Decisions as to these financial contributions, which may involve significant expenditure, will be decided by a vote.

### **Owners corporation rules**

The owners corporation rules may deal with matters such as car parking, noise, pets, the appearance or use of lots, behaviour of owners, occupiers or guests and grievance procedures. You should look at the owners corporation rules to consider any restrictions imposed by the rules.

### **Lot entitlement and lot liability**

The plan of subdivision will also show your lot entitlement and lot liability. Lot liability represents the share of owners corporation expenses that each lot owner is required to pay. Lot entitlement is an owner's share of ownership of the common property, which determines voting rights. You should make sure

---

that the allocation of lot liability and entitlement for the lot you are considering buying seems fair and reasonable.

**Further information**

If you are interested in finding out more about living in an owners corporation, you can contact Consumer Affairs Victoria. If you require further information about the particular owners corporation you are buying into you can inspect that owners corporation's information register.

**Management of an owners corporation**

An owners corporation may be self-managed by the lot owners or professionally managed by an owners corporation manager. If an owners corporation chooses to appoint a professional manager, it must be a manager registered with the Business Licensing Authority (BLA).

IF YOU ARE UNCERTAIN ABOUT ANY ASPECT OF THE OWNERS CORPORATION OR ANY DOCUMENTS YOU HAVE RECEIVED IN RELATION TO THE OWNERS CORPORATION YOU SHOULD SEEK EXPERT ADVICE.

---

---