# Submission - Proposed Owners Corporations Regulations 2018 - Hamilton Lawson Real Estate Agents (John Lawson)

Madam/Sir,

I will address your request for input by the following headings:

## Insurance Commissions

To emphasise the most critical reform required I will commence with the legislative right given to owner’s corporation managers to receive a commission from insurance companies. Apart from being worthy of an investigation as to how this was allowed it provides for the legalisation of a conflict of interest and is widely abused. When this conflict of interest is challenged the manager refers to the legislation to justify his actions. As most lot owners represent small residential owners or small investors they lack the knowledge and skill to dispute this practise and are often intimidated by not wishing to be seen as an irritation to proceedings. This anomaly should not require any further explanation but happy to expand if required.

## Industrial Estates

Our company Hamilton Lawson is an industrial real estate agency and manages a number of industrial estates as owner’s corporation manager. The legislation that we are required to act under is drafted for residential owner’s corporations and the Act fails to make any distinction. As a result we have had to supplement the Act with Special Rules. A copy is attached. Industrial owner’s corporations are different in the use lots are put to, therefore engender different behaviour by occupants. This is evident in traffic management, use of parking bays, rubbish management and advertising signage. The attached copy addresses these issues.

## Advertising Signage Code and Policies

Commercial and industrial owner’s corporations should have mandatory advertising signage codes adopted by lot owners and drafted into Special Rules to be administered by a committee or manager.

## Owner’s Corporation Managers

The position a manager holds can lead to abuses by both lot owners and the manager themselves. Sometimes this is through ignorance other times by intent. A manager may elect to neglect to enforce a breach of the rules or regulation where the lot owner involved has ownership of a number of lots or has to interact with an influential lot owner. The Act offers no protection to a manager who acts in a proper manner in the administration of his or her duties. Conversely a manager can provide benefits to an individual lot owner, such as meeting the cost of some repairs as an owner’s corporation expense to a lot, that could be argued to be that owners liability. All on the understanding of the lot owner supporting the reappointment of the manager. Although difficult to legislate the low barriers of entry to act in the business of owner’s corporation manager leads to a high level of competition and low if any profit margins. Often made with false claims as to expertise and skills. This culminates in the employment of unskilled low paid staff given a large volume of work with no in-house training. The industry training offered is designed to accommodate the lowest common denominator and fails any vigorous academic standards.

## Management Contracts

The management template provided under the Act is inadequate in that it lacks detail in the tasks, duties and responsibilities of the manager. The management contract attached is as prescribed but adapted to detail the tasks and responsibilities.

## Capital Replacement

As referred to above with many small lot owners there is a high level of ignorance as to the capital needs to properly protect and enhance their equity. Even the term ‘Sinking Fund’ is archaic and meaningless. Capital Replacement Funds should be mandatory under legislation and designed to meet the needs of a properly prepared Maintenance Plan.

## Maintenance Plan

Depending on the size, an owner’s corporation should be required to submit a detailed Maintenance Plan with plans and work schedules drafted by or reviewed and signed off by a competent expert.

## Committees

Committee’s often consist of members who lack a gross understanding where their powers are limited and through such ignorance make decisions that they lack the power to do so. There is a gross lack of awareness as to a committee’s members liability if they make a decision that involves a financial transaction and results in a dispute or litigation. Such decisions are often made in the belief of possessing such powers, the perception of expediency and with a folkie philosophy rendered as common sense. Where a dispute or litigation results, the committee member will become disgruntled and disillusioned, resign from the committee leaving a mess to be resolved.

Within committee there will be decisions made in which there will be a conflict of interest. An example is where a consent is required as to amount of signage would be permissible by a committee that involved a committee member. The rejection of the signage proposal could result in the loss of a tenant for the committee member therefore income. Given that the committee member may desist from voting there will be a general reluctance to disappoint the committee member. Particularly is at a later date some of the committee may be in a similar position.

## Access to Information

Given the position that committees and managers will be placed in and generally lacking the required knowledge, ease of access to VCAT decisions and their explanations would greatly increase the awareness of committee’s and managers.

John Lawson

Hamilton Lawson