

30 August 2018

Simon Cohen
Deputy Secretary, Regulation and Director, Consumer Affairs Victoria
Department of Justice and Regulation
Level 17
121 Exhibition Street
Melbourne VIC 3000

By email: angus.duncan@justice.vic.gov.au

Dear Mr Cohen

Regulatory Impact Statement for Proposed Owners Corporations Regulations 2018

The Law Institute of Victoria (LIV) thanks the Department of Justice and Regulation for the opportunity to provide feedback in relation to the Regulatory Impact Statement (RIS) for the proposed Owners Corporations Regulations 2018 (the proposed Regulations).

As a general observation, the LIV understands that there are not many amendments in the proposed Regulations which differ from the Owners Corporations Regulations 2007 (the current Regulations). However, the LIV notes that the proposed Regulations differ from the current Regulations as follows:

- Proposed Regulations: 1(a), 1(b), 5 (“Australian Accounting Standards”), 7, 8, 10, 11, 19 (the references to Acts differs); and
- Schedule 2 Model Rules Items: 2, 5.2, and 5.3.

LIV Feedback on the Proposed Regulations

The LIV provides the following feedback in relation to the proposed Regulations:

Proposed Regulations 1(a) and 1(b)

The LIV considers that these proposed amendments are acceptable.

Proposed Regulation 5

The LIV considers that the definition of “Australian Accounting Standards” is acceptable.

Proposed Regulation 7

The LIV considers that this proposed amendment is acceptable.

Proposed Regulation 8

The LIV considers that proposed amendment 8(c) should contain a reference to solar panels.

Proposed Regulation 10

The LIV considers that this proposed amendment is acceptable, subject to the comment that it does not address the situation where a committee member is always absent but appoints a non-committee person as their proxy.

Proposed Regulation 11

The LIV considers that this proposed amendment is acceptable. The LIV suggests, however, that except for managers of prescribed owners corporations, the dollar requirement for professional indemnity insurance should, perhaps, be greater, for example, \$5 million. The LIV notes that managers of prescribed owners corporations may be responsible for overseeing major infrastructure works of an owners corporation which may be for many millions of dollars and \$2 million may be insufficient. The LIV further suggests that professional indemnity insurance should be for any one event and not an aggregate amount.

Proposed Regulation 24

The LIV notes that the RIS on page 8 regards an unregistered person acting as an owners corporation manager as a minor offence for the purposes of proposed Regulation 24. The LIV considers, however, that such an offence is unlikely to be viewed as minor by all, or at least the majority, of industry participants. The LIV suggests that this particular offence should be reclassified as a major one.

LIV Feedback on Schedule 1 of the Proposed Regulations

In relation to the proposed Schedule 1, the LIV notes that the 'Owners Corporation Plan No. Proxy Form' states "Under regulation 6 of the Owners Corporations Regulations 2007".

The LIV suggests that this should, instead, state "Under regulation 9 of the Owners Corporations Regulations 2018".

LIV Feedback on the Model Rules for an Owners Corporation

In relation to the proposed Models Rules for an owners corporation, contained in Schedule 2 of the proposed Regulations, the LIV provides the following feedback:

Schedule 2 Item 2.1

The LIV considers that this is acceptable.

Schedule 2 Item 5.2

The LIV queries whether proposed Model Rule 5.2(2) should be deleted or reworded. The LIV understands that the RIS states that the proposed Model Rules should "reduce disputes where relevant actions are already occurring without a suitable rule in place". However, the LIV suggests that the question of whether the owners corporation has "unreasonably" withheld approval may give rise to further disputes.

The LIV further considers that the wording of proposed Model Rule 5.2 creates an expectation that most changes to the external appearance will be approved, subject to conditions. The LIV suggests that it is certainly foreseeable that some changes to external appearances should not be approved and will definitely affect the value of other lot owners' lots. The LIV considers that the owners corporation's power to refuse such applications should not be fettered.

Schedule 2 Item 5.3

The LIV considers that this is acceptable.

Applicability of the proposed Model Rules

The LIV understands that the proposed Model Rules will apply to all owners corporations from the date that the proposed Regulations commence. The LIV considers that clarification is required as to whether the proposed Regulations and s 139 of the *Owners Corporations Act 2006* (the Act) achieves this and whether the proposed Regulations should specifically state this.

The LIV further notes that if the proposed Model Rules will apply to all owners corporations, then if an owners corporation wants to add to the proposed Model Rules, it will need to resolve by special resolution to change its rules. The RIS states on page 24 in clause 4.2.2 that if a small number of small owners corporations do not want to adopt the new rule, this would only require a very brief entry in the minutes at their next meeting. However, s 139(2) of the Act states that the Model Rules apply to the owners corporation unless it does not make any rules or revokes all of its rules. In addition, s 138 of the Act states that an owners corporation may by special resolution make rules for or with respect to any matter set out in Schedule 1. The LIV suggests that the RIS is misleading because it does not address the need to obtain a special resolution.

Conclusion

We would welcome the opportunity to meet with you to discuss the above issues. In the interim, please do not hesitate to contact me or Patrick Fong at PFong@liv.asn.au of the LIV's Property and Environmental Law Section.

Yours sincerely



Belinda Wilson
President
Law Institute of Victoria