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Mr Simon Cohen
Deputy Secretary Regulation and
Director Consumer Affairs Victoria
c/o – Angus Duncan

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


Dear Mr Cohen

RE: Regulatory Impact Statement for Proposed Owners Corporations Regulations 2018

The REIV welcomes the opportunity to provide comments on the RIS for the proposed 2018 Regulations for Owners Corporations.

While generally the REIV agrees with much of the commentary in the RIS, the following matters require further consideration:

Proposed infringement amounts

The following statement appears at page 8 of the RIS –

“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.”

Table 5 following the statement proposes imposing a fine of 6 penalty units for acting as an Owners Corporation manager without being registered.

Registration of managers is fundamental to the operation of the Owners Corporations Act. It is our firm view that acting as an unregistered OC manager is not “minor law-breaking”. It is the equivalent of acting as an estate agent without a licence, a serious offence. Stigma should be a consequence for anyone convicted of being an unregistered OC manager.

The REIV considers acting as an OC manager without being registered should no longer be the subject of an infringement notice and should be removed from the Table.

If, contrary to this position, it is considered appropriate for an infringement penalty to remain, the REIV considers it should, at the very least, be 25 per cent of the maximum penalty for the offence, currently 60 penalty units.

Professional indemnity insurance

Adequate protection for those dealing with, or affected by the activities of, OC managers is the paramount consideration in prescribing the base level of PI insurance cover required.

That protection in 2018 and beyond – the regulations have a 10-year life span – must not be dictated by historical data or a cost-benefit analysis which purports to justify the assertion “*it is unlikely that claims [i.e. PI insurance claims] would ever exceed \$2 million*”, or by the level of cover currently in place in New South Wales.

Currently, a base PI cover of \$5m is commonplace for businesses managing the assets of others. As the proposed Regulations will have a 10-year life span, the REIV recommends \$5m be the minimum amount of required PI cover.

The basis of the cover is important. Section 119(5) of the Owners Corporations Act requires a remunerated OC manager to hold “*professional indemnity insurance that is sufficient to meet claims up to a level of the prescribed amount in any one year.*”

The section is not explicit about the basis of the cover; Is it an aggregate cover or an any one claim cover?

An aggregate cover will provide cover up to the full limit for all claims made during the insurance period.

An any one claim cover will provide cover up to the full limit for each individual claim made during the insurance period.

The following example - based on the proposed \$2m cover – illustrates the difference. If, during the period of insurance, two \$2m claims are made against the OC manager’s \$2m aggregate PI policy, the insurer will pay up to the \$2m limit on the first claim however, the policy will not cover the second claim.

If the policy provides an any one claim cover, as each claim is within the limit of the cover, the insurer will pay both.

The REIV recommends the prescribed cover be on an any one claim basis and this be the requirement of proposed Regulation 11.

Committees

The ability to remove a non-attending committee member does not go far enough. In addition, it does not cover the situation of a committee member who never attends but appoints a non-committee member as their proxy.

The REIV recommends it be a requirement for committee members to attend 75 percent of meetings, the ability to appoint a proxy be limited to appointing another committee member in their stead and the appointment only be valid for one meeting.

Schedule 1 – Proxy Form

Immediately below the heading, "*Under regulation 6 of the Owners Corporations Regulations 2007*" should be deleted and replaced with "*Under regulation 9 of the Owners Corporations Regulations 2018*".

May we thank you again for the opportunity to provide comment on the Regulations.

If you require further information or clarification, please contact Amelia Bitsis, Government Relations and Policy Manager at the REIV on Tel: 9205 6636.

Yours sincerely



Gil King
Chief Executive Officer