

CITY OF MELBOURNE

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Dear Mr Cohen

OPTIONS FOR REFORM OF THE OWNERS CORPORATIONS ACT 2006

The City of Melbourne administration welcomes the opportunity to provide a submission to the review of the *Owners Corporations Act 2006* as part of the Government's review of consumer property legislation.

The City of Melbourne is unique in the Victorian context in that over 80 per cent of the municipality's residents reside in strata titled properties, with that figure increasing. The City of Melbourne's role in the apartment sector covers health, safety and wellbeing; emergency management; administration of planning and building; community development; and sustainability.

In our previous submission in relation to Issues Paper 2, the City of Melbourne outlined concerns that the current Owners Corporations model is poorly suited to the management of large apartment buildings and that this presents risks to public and tenant safety. The model also presents challenges for effective asset management, and does not support the effective engagement of all affected parties.

In this submission, the City of Melbourne has provided comment specifically on issues relating to Owners Corporation management and governance, focusing on skills and responsibilities. Reforms in these areas have the potential to address the issues mentioned above and detailed in our previous submissions.

The City of Melbourne's submission follows the questions and structure set out in the issues paper with questions omitted where no comment has been provided.

Please do not hesitate to contact me at kate.vinot@melbourne.vic.gov.au if you have any questions regarding this submission.

Yours sincerely,

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Consumer Property Law Review

Options for reform of the *Owners Corporations Act 2006*

Submission: 28 December 2016

Review background

Consumer Affairs Victoria is undertaking a review of the following consumer property legislation:

- *Estate Agents Act 1980*
- *Owners Corporations Act 2006*
- *Conveyancers Act 2006*
- *Sale of Land Act 1962*

Issues papers 1, 2 and 3 were released earlier in 2016.

This submission addresses an Options Paper for the reform of the *Owners Corporations Act 2006*. The Options Paper is available at:

<https://www.consumer.vic.gov.au/consumerpropertylawreview>

The City of Melbourne has structured this submission to respond to particular questions raised in the Options Paper. This submission should be read in conjunction with the issues paper. References to 'the Act' are to the *Owners Corporations Act 2006*.

Regulation of owners corporation managers

4) Which option, and why, would be more effective in ensuring the ongoing knowledge and skill of owners corporation managers?

The role of an owners corporation manager is complex and diverse. The role requires the application of legislative requirements, knowledge of finance and legal systems, an understanding of infrastructure and the built environment, plus the ability to navigate the human complexities that arise from close living and collective decision-making. It is therefore critical that managers are supported and encouraged to continue to develop their skills and either option 2A or 2B could deliver on this need, however careful consideration should be given to the CPD topics and delivery modes (see question 7 below for details).

7) What other options are there to support the ongoing maintenance of the knowledge and skills of owners corporation managers?

Regardless of which option is chosen, there is a need for careful consideration into training delivery modes and the topics that are eligible for continuing professional development (CPD) points:

- It is critical that CPD topics keep up with social and technological changes and go beyond legislative knowledge. Consideration should be given to topics including community cohesion and cultural diversity (including international student issues), facilitation, dealing with conflict, negotiation, changing technology, energy efficiency and sustainability in buildings, emergency management and communications.

- Many CPD programs in the strata sector focus on passive learning (conferences, reading and discussion based learning). A stronger focus on experiential learning would deepen the insights and help integrate the learning into daily practices.
- Any CPD program should include training beyond that tailored specifically to the strata sector. There are existing training programs for the topics above that owners corporation managers could undertake. This would provide an efficient way for owners corporation managers to train in new topic areas and also support cross-sector learning.

Responsibilities of developers, occupiers and committee members

15) Are the enhanced general obligations under Option 5A sufficient or are the additional obligations under options 5B, 5C and 5D needed, and if so, why?

To remove a potential conflict of interest in the defects liability period the City of Melbourne administration suggests prohibiting developers appointing themselves or their associates as owners corporation manager within the first 10 years of a development (5C).

17) Why would the 'building defects' obligation be necessary?


Defects and defects liability is a key issue when owners take possession of their property including the common properties. There is significant opportunity for improvement in the current rules as the direct relationship between the builder and owners is convoluted, making rectification problematic.

18) If it is desirable to expand the rule-making power to include rules on smoke drift, renovations and access to common property: (a) should Model Rules also be made on those subjects, and if so (b) are the proposed Model Rules based on reasonable presumptions about what most lot owners in owners corporation would regard as unobjectionable, and are they adequate?

The City of Melbourne administration commends the suggestion under option 6D that rules about the external appearance of lots would be amended so as not to include rules that unreasonably prohibit the installation of items to improve environmental sustainability on the outside of private lots, including for purely aesthetic reasons. Whether installed on private, common or public land, sustainability items serve a common good as well as a private benefit. It is therefore logical that these items are actively encouraged and that barriers to installation are removed.

The City of Melbourne administration agrees with option 6B which gives owners corporations access to private lots to repair common property, as access may be needed in order to repair waste management systems and other systems that bridge the private/common area realms.

There is a divide occurring in modern apartment buildings between the owner occupiers and also the apartments which are purely investment properties and of those investment properties which are used for short term stays. Rules of the body corporate should be reflected to all lot owners and also occupiers. As highlighted in the introduction, apartment living is about being in a shared living environment with all parties having responsibilities to others for their quiet enjoyment.



19) Would a Model Rule on fire-safety advice to tenants, in principle, be unobjectionable, and if so, why?

It should not be unobjectionable as the safety of owners and occupiers is not and should not be the responsibility of some and not others.

20) Do all or only some of the options improve the position of owners corporations and why?

All options improve the position of the owners corporations in meeting their responsibility to all occupiers. For example the ability to cause repairs to common property is necessary, especially where it is fire services or a part of property which can only be done by the owners corporation. For example, at the Lacrosse building, if the external cladding is to be replaced it can only be done so logically by one entity, the owners corporation, for all apartments. It would be physically impossible for it to be undertaken by the individual lot owner, especially if you have to consider it will require scaffolding

21) What additional justification, if any, is needed for the proposal for the joint and several liability of lot owners for breaches of owners corporation rules by their tenants and invitees?

This needs to be considered in light of short stay accommodation and airbnb within apartment buildings.

22) Is it sufficient simply to expand on the existing duties of committee members to address the issue raised, or is a complete reformulation of committee members' duties, along the line of the Associations Incorporation Reform Act, necessary, and if so, why?


Option 7B, reformulate the duties of the committee members according to the Associations Incorporation Reform Act is preferred. Role and responsibility confusion are commonplace in the strata sector, particularly amongst apartment owners and tenants. Any efforts to align with existing well-understood governance structures would assist with role clarification.

The majority of executive committee members are unpaid volunteers who hold a large responsibility and burden on behalf of the owners. Their contributions are often undervalued by or invisible to the broader owners corporation and resident communities. As highlighted in the discussion paper, filling the executive committee positions and gaining full engagement is a challenge for the sector. The City of Melbourne administration commends the ideas of providing voluntary training to assist them to understand and fulfil their obligations and responsibilities. In addition consideration should be given to how executive committee members can be supported (as opposed to trained). This could include a special support function built into CAV and/or collaboration with local governments to provide local support groups and workshops specifically for executive committee members.

23) What risks or unintended consequences might arise with options 8A, 8B and 8C, which propose extending the powers of owners corporations to deal with community building, water rights and abandoned goods?

The City of Melbourne administration supports the concept of including community building as an express function of the owners corporation. Inherent in owners corporations and apartment buildings is the need for good communication and a degree of collaboration between owners/residents. It is therefore logical that the owners corporation considers and takes some responsibility for ensuring the communities function.

As outlined in the Resilient Melbourne Strategy (p3), greater Melbourne faces a raft of increasing shocks and stressors including rapid population growth, increasing rates of



alcoholism and family violence, floods, heatwaves and infrastructure-related emergencies, all of which will impact on the strata sector. The Strategy identifies community cohesion as a key strategy to mitigate these shocks and stressors, specifically the strategy recommends that we:

- Empower communities to take active responsibility for their own and each other's wellbeing, safety and health.
- Create and sustain buildings, infrastructure and activities that promote social cohesion, equality of opportunity and health.

Careful consideration should be given to the wording of 8A to ensure the intent is clear and to allow owners corporations to undertake this function to the needs of their community.

The inclusion of a community building function for owners corporations is a welcome but significant change. It will require an active program of education and inspiration for owners corporation members and managers. This legislative change again provides an opportunity for collaboration between state and local governments to engage and empower local strata communities.

24) What is the best approach for dealing with abandoned goods on common property, and why?

The City of Melbourne administration supports option 8C which would permit owners corporations to dispose of abandoned goods on common property as it would enable owners corporations to use existing council hard waste collection entitlements to assist with disposal of this material. The speedy removal of abandoned goods is important as it facilitates the safe enjoyment of space for residents and reduces risk for tenants and the owners corporation.

Dispute resolution and legal proceedings

31) How well do options 11A and 11B address the issues raised about the role of owners corporations in dispute resolution and the procedures under Model Rule 6?

Disputes and conflict resolution are specialist skills that are currently lacking in the broader strata sector. Current resolution practices encourage a win-lose state, which can drive increasing animosity amongst owners/residents. Any legislative changes and following education campaigns should promote early intervention, the use of existing specialist advice or services (including the Victorian Government's Dispute Settlement Centre services) and negotiating mutually satisfactory outcomes.

Owners corporation managers and executive committee members would benefit from some training or exposure to conflict resolution and prevention techniques to help prevent the escalation of issues.

