

**Consumer Property Law Review**  
**Options for the reform of the Owners Corporations**  
**Act 2006 – Submission**

Please find below my submission in relation to the above noted options for the reform of the Owners Corporations Act 2006 (numbering is as per the Options Paper).

List of consultation questions and responses

**Regulation of Owners Corporation Managers**

- 1 What option do you support, and what are the features of that option that make it the most practical and cost effective way of improving the quality and conduct of owners corporation managers?

**I support Option 1A.**

**A licensing scheme would make license holders more responsible for their actions and may mitigate irresponsible/criminal actions by managers in the industry.**

**Any additional costs in setting up and operating a government licensing's scheme would be negated by the fees it charges, irrespective of the need for Victoria to have a dedicated department dealing with all Owners Corporation matters which it is current lacking.**

**There would be no impact for Owners Corporation through higher fees for such compliance as the OC industry already operates at a low cost base compared to the services they offer despite already having qualified people in the industry. The market will always determine the rate, not any need for additional training or license fees.**

- 2 What other eligibility criteria should be considered under Option 1A or Option 1B?

**In addition to the criteria under Option 1A, a requirement for a licensed Owners Corporation Manager should include a minimum 1 years' experience working in the industry (prefer 3 years), as is a similar requirement for a licensed Real Estate Agent in Victoria. This will prevent inexperience Managers operating companies who may have completed training but have no practical experience in how to apply the training received.**

- 3 What other matters are important to consider for the transitional arrangements under Option 1A?

**Should training be a requirement as in Option 1A, there should be an allowance made for existing Owners Corporation Managers who have been working in the industry for many years and will most likely be eligible for RPL on any training course.**

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

**Option 2B would be preferred with a mandated CPD program as it will be a simpler system to adhere to and ensure Managers are receiving relevant training.**

- 5 What evidence is there of the benefits of continuing professional development for owners corporation managers, or for property occupations more generally, in Australia or overseas?

**The property industry is one with numerous challenges that require a hugely diverse set of skill to master, let along the myriad of different legislation that an OC Manager must have knowledge of in order to perform their role well. Only training and experience will give OC Managers that knowledge and it is not knowledge that can be obtained in a one off course at the time of license registration.**

- 6 If continuing professional development is preferred, what steps could be taken to ensure the ongoing quality and appropriateness of the training, and to reduce the risk of exploitation by training organisations and participants?

**Ideally CAV would need to approve content of training courses provided by training organisations and step out their conditions if they are to meet the criteria for CPD.**

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

**In house training is one option, provided it only counts to a low amount of CPD points to avoid exploitation by a company.**

- 8 Which option is fairer to both parties and why?

**Option 3A is fair, as some OC Managers exploit the existing clauses to the detriment of the Owners Corporation. Allowing a contract to roll over to a month to month arrangement is adequate as it will cover apathetic Owners Corporations who may not take action to renew or otherwise as the apathy will continue as will the contract, albeit on a month by month term.**

- 9 Under option 3A, if certain terms are to be prohibited as unfair what types of terms should be prohibited and what types of terms should not be prohibited and why?

For example, while a requirement for an owners corporation to pay a pre-determined fee in the case of an early termination is not inherently unfair, is there nevertheless a case for prohibiting such fees on the grounds that they may be unfair and may intimidate owners corporations from terminating management contracts?

**All the terms listed are agreeable, in addition to contract being no more than 3 years in duration (to go to monthly if not renewed).**

**Removing the automatic rollover clause is abused by some OC Manager who use it to prevent Owners Corporations from changing managers if they do not receive the correct notice nor get a resolution in time prior to the renewal date.**

**There should be provisions to allow OC Managers to recover costs if a contract is terminated midterm for example.**

- 10 Should 'reasonable' notice be quantified under Option 3B and, if so, for how long?

**All time periods should be quantified.**

**No contract should ever be able to be terminated "without cause" as it defeats the purpose of entering into a contract in the first instance. If unfair terms were removed and maximum terms set on contracts, as well as preventing developers entering into contracts with associated companies then this aspect is not required.**

- 11 What is the best and fairest way to exercise the termination right under Option 3B?

**Termination of an existing contract mid-term should only occur if there is a material breach of the contract and that breach is not rectified by the OC Manager in an appropriate timeframe. In additional contract should be terminated by any criminal or otherwise act by the OC Manager.**

- 12 Are the disclosure requirements proposed under Option 4A sufficient to address potential conflicts of interest for managers and, if not, what other measures are required?

**Agree with this option and requirements, in addition if a commission or similar not be disclosed, that commission must be paid to the Owners Corporation.**

- 13 Is Option 4B sufficient to address the issues arising from the pooling of funds, or is the extra level of regulation under Option 4C required, and if so, why?

**Yes Option 4B is sufficient.**

- 14 What are the risks, if any, of unintended consequences arising with the measures proposed in Option 4B or Option 4C?

**There would be additional costs to Owners Corporation in administrating a formal trust account as listed in Option 4C**

## 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?

**Option 5A would in no way change the current situation, if developers don't fulfil an obligation in a 5 year period why would they in a 10 yr. one?**

**Fully support Option 5B and 5D – budgets should be set at “Year 2” levels when all warranties have expired, developers should not be allowed to sell OC Management contracts, and the disclosure aspect should be expanded to a similar model to the recent NSW changes prohibiting a developer or associated company from being the OC Manager or Facility Manager or provide any other service and include the other obligation listed under Option 5C.**

- 16 Are the ‘further expanded’ obligations under options 5B or 5C necessary or should the Queensland or New South Wales approach, as applicable, be adopted without change?

**See point 15.**

- 17 Why would the ‘building defects’ obligation be necessary?

**The obligation is necessary as builders rarely fulfil all their obligations to rectify defects resulting in huge costs to the Owners Corporation to pursue them through the courts which is generally not cost effective and may not even be possible due to the requirement of the Owners Corporation to have a special resolution to take such action. Developers and building are aware of these restrictions and use them to their advantage.**

- 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?

**Yes as they are standard situations that occur across all Owners Corporations, however there should be no allowance made for owners to make changes to the External Appearance to Common Property, minor or otherwise, as it will be abused and cause great conflict within an Owners Corporation. All external changes must be approved by the Owners Corporation at all times.**

**There should also be a model rule about renovations that alter the acoustics of the flooring of an apartment to ensure any new flooring meets a certain decibel level that is approved by the Owners Corporation, either in a rule or by a General Resolution.**

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

**No it wouldn't, in fact it should be extended to allow for False Fire Alarm activations and the associated fines charged by the Fire Authority to be charged to the resident who caused the alarm as it is unfair on all other owners to pay for such instances.**

- 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 Corporation to effectively manage the property as some property owners have no interest in what their tenants do or problems they cause other residents and therefore take no action under the Tenancy Act.**

- 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?

**See point 20.**

- 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?

**I agree with option 7B to completely reformulate committee members' duties, along the line of the Associations Incorporation Reform Act as it makes it very clear what obligations and responsibilities a Committee Member has to follow.**

- 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 risks are noted in the Options paper however to overcome some aspect I believe if a Community Group or activity was proposed the Owners Corporation should be able to charge those residents who want to use the service on a cost recovery basis so owners who have no interest in such activities do not fund them through their fees.**

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

**The Option 8C deals with this matter adequately.**

- 25 What are the benefits and risks of the additional power proposed for goods that block access?

**Allows for timely action to remove goods or vehicles that block access and therefore better management of the Owners Corporation.**

## Decision-making within owners corporations

- 26 How might the limitations on proxy farming have negative consequences for the governance of inactive owners corporations?

**There are none, an inactive Owners Corporation would still need 1 person (the proxy holder) to turn up regardless of how many proxies are held by that person, restricting the amount they can hold will not prevent the meeting from proceeding whether or not a quorum is present and the meetings resolutions will just be delayed by 29 days as is the case in even active Owners Corporations that have large numbers of lots but fail to achieve quorum.**

**I fully support Option 9A.**

- 27 Which approach to giving owners corporation managers decision-making powers in Option 9B is the more effective and why?

**Option 9B-2 is the better option for the reasons specified in the options paper.**

- 28 What are the risks of giving owners corporation managers decision-making powers in the absence of a licensing or enhanced registration scheme for managers?

**Lack of training/experience/knowledge may open this amendment open to abuse if OC Managers are not accountable for their actions in the form of a Licensing scheme.**

- 29 Is further relaxation of the special resolution process required for inactive owners corporations and, if so, which alternative under Option 9C is preferable and why?

**Yes – 9C is acceptable however the percentage used to ascertain a majority should be based on Lot owners present or represented by proxy at the meeting, rather than a percentage of all lots in the Owners Corporation. If an owner was concerned about a proposed Special Resolution then they would make an effort to attend the meeting or grant a proxy to someone who could represent their interest in the matter at hand.**

- 30 How might reducing the size of an owners corporation committee and providing for who can arrange a ballot improve its functioning?

**Less opinions in smaller Committees make for timely efficient decisions being made on matters however Option 10A should not have the option to extend the size of the Committee to 12 as you will end up with the same situation today as everybody will want to remain on the Committee so it will have no practical effect.**

## 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?

**Option 11A is adequate.**

**Agree with Option 11B however who pays for this cost? If a matter was to go for an expert determination, it would be unfair for the Owners Corporation to wear cost, especially in disputes between lot owners or where vexatious claims are made.**

- 32 What are the benefits and risks of increasing the amount of the civil penalties for breaches of the rules?

**The benefits are quite substantial. Currently breaches of the rules by owners are treated as a joke and something that is simply dismissed with no recourse as very little breaches (as a whole) end up anywhere near VCAT.**

**Any civil penalty can also be disregarded, regardless of its amount, if VCAT is never going to impose such a penalty, but I would agree with such an increase as \$250 is nothing for someone who is willing to continually breach a rule for their own purpose.**

- 33 Which option for reforming the imposition and payment of civil penalties achieves the best balance between fairness and effectiveness, and why?

**Option 12B can be the only affective outcome to dealing with such breaches, keeping the penalty to \$250 would be acceptable in this instance if there are concerns. Such penalties collected can go towards rectifying the breach that has occurred or be put towards works to mitigate further breaches by that person(s). I don't believe there would be an abuse of power provided the OC has a requirement to prove a breach before a penalty is applied, in fact if anything I believe you would have most OC's hesitant to impose any penalty on a fellow owner.**

**Option 12C is pointless as VCAT rarely imposes penalties and I believe they would be even more hesitant to do so if the penalty were to go to the OC.**

**Option 12D would, in my opinion, make it less likely an OC would pursue any penalties against a resident/owner.**

- 34 Which option, and why, best balances the need for owners corporations to be able to commence legal actions with protection for those lot owners opposed to an action?

**Fully support Option 13A. The reference to this removing the safeguard on incurring onerous legal costs is not appropriate as Committees (Owners Corporations) are well aware of spending funds to pursue legal matters and are always hesitant at going legal due to the costs involved.**

- 35 If Option 13A was adopted, would the current provision of the Owners Corporations Act that empowers VCAT to authorise a lot owner to commence proceedings on behalf of an owners corporation still be necessary?

**Yes as there may be times that a Committee for an OC may be hesitant in commencing proceedings or they may delay a decision on a matter that requires expedited action.**

- 36 If Option 13B was considered appropriate but the 66 per cent threshold was considered insufficient to overcome the problems identified, would a further reduction to 60 per cent be appropriate?

**No, having the level at 75, 66 or 60% would all have the same effect as the current situation as you wouldn't reach these levels in the first instance.**

### **Differential regulation of different sized owners corporations**

- 37 Which option, and why, represents the most appropriate way to differentiate the level of regulation of owners corporations according to their size?

**Agree with Option 14A, although I still believe all OC's accounts must be independently audited and all should have maintenance plans in place.**

- 38 Is the size of owners corporations in each tier appropriate for the requirements imposed on them and, if not, what should be the size requirement for each tier?

**I would change Tier 3 to be what Tier 4 was proposed to be and leave the rest (obviously with the change to Tier 2 to be 3-50 lots).**

### **Finances, insurance and maintenance**

- 39 What other options could be considered to enable owners corporations to recover debts?

**I believe the existing provisions are sufficient, including the enhanced ability to recover costs as detailed elsewhere in the options paper.**

- 40 Should the amount of any fee bond be left to owners corporations to set and, if so why?

**Yes and No- it should be a limit set by the Owners Corporation up to a maximum limit set in legislation (which may be 1 quarters fees or 6 months of fees for example). Although I don't agree with a bond type system as it will increase administrative costs to the Owners Corporation in managing the process.**

- 41 Should a maximum amount be set out in the Act and, if so, what should that amount be?

**See point 40.**



- 42 Would it be more efficient if fee bonds were held by the owners corporation itself, the owners corporation manager or the RTBA?

**It would be far more efficient for the Owners Corporation to hold the bond in its accounts provided conditions are set that it must not be used for any other purpose.**

- 43 Should owners corporations be able to recover costs that exceed the debt or should they be capped at level of the debt?

**Owners Corporations should be entitled to recover all costs incurred to recover debt. For example, debts with smaller Owners Corporations, where one lot in debt has a significant impact on its financial status, the legal costs may exceed the debt but such action is needed to ensure the viability of the OC to service its financial obligations.**

- 44 Which of the 'litigation costs' options better achieves a balance between financial equity for lot owners, encouraging alternative dispute resolution and discouraging unnecessary use of lawyers?

**Option 15E is preferable and give certainty for cost for all parties to a claim.**

- 45 What would be the cost of increasing the minimum public liability insurance amount to \$20, \$30 and \$50 million?

**Minimal, many large Owners Corporations already have at least \$20 million coverage.**

- 46 How might the equity achieved by the powers proposed under Option 16B outweigh the potential problems?

**Fully support this Option (16B) however it would be hard to implement a levy to an owner whose actions increased the premium from their claim as insurers would not be able to provide what this amount would be in such a circumstance and insurers also take into account all claims made in a property over the year (and past years) so you may have to spread the cost over many lots. It's best to just have the power to levy lot owners the excess incurred on a claim in such circumstances and recover any shortfall in expenses that an insurance policy may not pay out.**

- 47 In relation to the proposal under Option 16B for differential levies for insurance policy premiums (where a particular use of a lot increases the risk) should owners corporations be:
- (a) required to apply to VCAT for the appropriate order, or
  - (b) Permitted under the Act to apply the appropriate levy as of right, leaving it to an aggrieved lot owner to apply to VCAT for any remedial order?

**Option B is the only practical option with the requirement on the OC to justify the levy based on some form of evidence. Applying to VCAT would result in VCAT receiving increased matters to consider and OC's not bothering with the process at all due to time and cost.**

- 48 Which option or options do you prefer for maintenance plans and funds, and how does the option or options address the issue?

**Agree with Option 17B, as they only way to ensure funds are available to maintain Common Property is through mandatory funding.**

**Contingency plans (Option 17C) are pointless if you have a properly drawn up Maintenance Plan to begin with.**

- 49 Should a general obligation be imposed to deposit in a fund the amount necessary to implement the relevant plan, leaving it to individual owners corporations to resolve on the appropriate part of annual fees or should some fixed proportion of fees be set in the Owners Corporations Act?

**I believe that as a minimum the Owners Corporation should levy fees that at least meet a threshold of 80% of the required contribution to meet the Maintenance Plan, provided they achieve a Special Resolution to determine the lesser levy. Professionally prepared Maintenance Plans are generally conservative in nature and therefore many Owners Corporation are hesitant to levy funds that meet the level in the plan. Therefore there should be a provision in the Act to accommodate such situations.**

- 50 If a general obligation, should the resolution as to the amount to be set aside be an ordinary or special resolution and should it also be stipulated in the Act that the designated part of the fees must be adequate to fund the plan?

**If not in the Act then it should be a Special Resolution to determine the funding level.**

- 51 If a fixed proportion of fees, what should that be for both types of fund?

**See item 49.**

- 52 Where an owners corporation needs to make an assessment of how much of its general repair and maintenance costs arise from a particular use of a lot, what criteria or principles should it apply in making the assessment?

**Any assessment on increased repair and maintenance costs would have to be on a case by case basis on individual invoices. For example if a hallway needed additional cleaning caused**

by a commercial lot owner then they would only pay an amount that's over and above the standard cleaning charge for that hallway.

It would also be difficult to determine what costs are factored into the lot liability attached to a lot as this is not listed anywhere and be open to challenge.

## Part 5 of the Subdivision Act

- 53 What, if any, risks arise from removing the requirement for owners corporations to have and use a common seal?
- None – it brings Owners Corporation in line with other legislation that has negated the need for a seal.**
- 54 How much should developers' property rights regarding initial settings of lot liability and entitlement give way to considerations of fairness?
- Developers should have little input into setting lot liability and entitlements as this should be performed by an independent party.**
- 55 If developers' rights should give way to fairness, which of options 20C to 20E for the initial setting of lot liability and entitlement best ensures fairness, and why?
- Option 20D is most appropriate.**
- 56 Under what circumstances could options 20B to 20D be implemented by the developer rather than a licensed surveyor (which would be cheaper and quicker)?
- None, licensed surveyor should always be used and is generally the standard practice in any event so cost would remain the same.**
- 57 To what extent should the surveyor (or developer) be required to set out how the criteria were applied in achieving the settings?
- The surveyor should indicate on the Plan of Subdivision why a lot liability or entitlement amount varies to a substantial degree from the other lots in the Owners Corporation.**
- 58 Under Option 20E, is 30 days a reasonable time for an owners corporation to notify Land Victoria of changes to lot liability and entitlement?
- Yes, provided Land Victoria changes its current practice of refusing online application from OC Managers and instead currently requires personal lodgement in their office.**
- 59 How might the proposal to reform the process for VCAT applications be sufficient to balance the rights of the majority of lot owners against those of a holder of the majority lot entitlement?
- The majority lot owners can always attend VCAT to oppose or support an application so I don't see this as an issue.**
- 60 Which option, and why, is the best and fairest way to provide for a more flexible process to sell buildings governed by owners corporations?
- Option 21B is preferred option as it covers all aspects needed to safeguard such a process.**
- 61 Under Option 21D, which voting thresholds and VCAT processes are preferable, and why?

**Voting threshold should be a percentage of both lots and lot entitlements with a VCAT process only on the application of a dissenting lot owner as for Option 21C for each tier.**

62 Under Option 21E, which sub-alternative is preferable, and why?

**Option 21E-2 is preferable as it frees up the opportunity to at least explore the option of a sale without the need for a special resolution.**

63 If the 'less restrictive' sub-alternative, should the special resolution be 75 per cent of lot entitlement only and should the burden of proof be on the applicant rather than the respondents?

**Should be both 75% of Lots and lot entitlement and burden of proof must be on the respondent to prove the sale case.**

64 To what extent do the options to reform the Subdivision Act in improve decision-making processes within owners corporations?

**It allows for Owner Corporation to have more control over the running and future of their own property.**

## **Retirement villages with owners corporations**

65 Which option, and why, better achieves the aim of ensuring that the operation of owners corporations in retirement villages conforms with both the Owners Corporations Act and the Retirement Villages Act?

**To avoid issues in voting it is best to separate the meetings and therefore Option 22b is preferable.**

66 If Option 22A, which sub-alternative, and why, better resolves the problems involved in the combining of annual meetings for owners corporations and retirement villages?

**The most appropriate option is to allow the village operator to decide on the meeting arrangement as they are the most well informed entity to make a decision of this nature for their particular retirement village.**

### **Submission by:**

Tony Overell

Senior Owners Corporation Manager / Project Manager

### **Experience**

12 years' experience in the property industry working as an Owners Corporation/Body Corporate Manager in the following jurisdictions:

- Victoria
- Queensland
- Middle East – Sultanate of Oman and UAE