

29 April 2016

Hon. Jane Garrett MP  
Minister for Consumer Affairs, Gaming and Liquor Regulation  
Consumer Affairs Victoria  
GPO Box 123  
Melbourne Victoria 3001

Dear Minister,

## **CONSUMER PROPERTY LAW REVIEW – OWNERS CORPORATIONS SUBMISSION**

Thank you for initiating the review of the *Owners Corporations Act 2006* and for the opportunity to comment. This legislation has considerable impact on the quality of life for people living and working in properties managed by an Owners Corporation. The efficiency and effectiveness of the Act's operating framework also significantly affects Victoria's economy and our ability to encourage investment in this important property segment.

Bosco Jonson Pty Ltd is Victoria's largest Cadastral Surveying firm with extensive relationships across the Housing, Apartments, Land and Infrastructure development industries. We employ more Licensed Surveyors, and lodge more Plans of Subdivision with Land Victoria (and hence produce more lots on plans) each year, than any other consultancy in the State. Bosco Jonson's detailed expertise and record for innovation in high-rise and multi-unit developments managed by Owners Corporations is highly respected by the development sector, our peers and Government agencies alike. In addition, Bosco Jonson works as part of the nationwide survey group, OTOC, which underpins our detailed understanding of how other jurisdictions deal with these types of reforms.

Section 13 of the **Consumer Property Acts Review Paper No.2**, discusses how Part 5 of the *Subdivision Act 1988* impacts on the operations of Owners Corporations. Based on our extensive experience servicing this market and navigating sound outcomes through the regulatory framework, we make the following comments:

### **Sale of Apartment Buildings**

- 1 Victoria's population projections forecast continued growth. Sustaining Melbourne's acclaimed liveability will rely upon clear policy commitments that encourage increased accommodation density and nurtures capacity to better use the amenity in established suburbs. Hence, the State Government must urgently reform legislative and operational frameworks to allow redevelopment of existing housing stock to make it fit-for-purpose. This will also help to ensure housing affordability.
- 2 The ability to efficiently and confidently retrofit and redevelop unsustainable, ageing and poorly designed apartment buildings is critical to meet Melbourne's accommodation demands. The present Owners Corporation regulatory arrangements prevent this from easily occurring or even occurring at all.
- 3 Unreasonable objections and minority membership percentages within Owners Corporations should not be alone allowed to prevent retrofitting or redevelopment of units.
- 4 The NSW Government has recently shown strong leadership and consulted extensively to reform their Strata (Owners Corporation) Laws. We suggest this is an excellent example of international best practice, and that the reforms have been very well received by the community and industry.
- 5 Victoria and NSW run similar Cadastral boundary and Land Administration systems. Together these jurisdictions represent the bulk of Australia's property market. Replication of NSW reforms would ensure consistency between the two States, which would greatly benefit property owners, the development and financial sectors. Given Melbourne's strategic advantages over the Sydney



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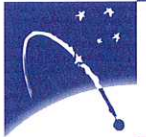
property market, system replication would potentially open significant opportunities to entice increased investment to Victoria from other States and internationally.

### Setting and Changing Lot Liability and Entitlement

- 1 Based on the collective experience and expertise of the Bosco Jonson team of Cadastral Surveyors, we believe that **Property Value** is the best determining factor in allocating Liabilities and Entitlements of Lots.
- 2 We strongly believe that Area is a contributing factor to Value, but not its sole determinate. Hence, Value is a more equitable comparison measure, which is widely understood by the community and industry. This approach is supported and reflected by the rating policy of Local Government.
- 3 The Victorian Government's Surveyors Registration Board registers and regulates Licensed Surveyors to give the community confidence in the property boundary system and as part of protecting the integrity of the State's cadastre and the property market it underpins. This means that every Licensed Surveyor is obligated by regulation and the Government's inspection and auditing of their work to make independent and evidence based decisions that are in the community's interests. It is therefore appropriate that only Licensed Surveyors are able to determine the Area of a Lot.
- 4 Developers and Licensed Property Valuers are the appropriate professionals to be making the determination of a Lot's Value. The *Subdivision Act* requires a Licensed Surveyor to allocate liabilities and entitlements across a multi-unit subdivision that has an Owners Corporation. We recommend that Surveyors should predominately use Lot Valuations that have been determined by a suitably qualified and experienced property industry professional when setting Lot liabilities and entitlements.

In addition, to the issues identified in the discussion paper prepared for this Review, it is strongly suggested that:


- 1 **Transfers using the TLA:** Variations to Owners Corporation structures are currently undertaken via the *Subdivision Act 1988*. This Review should consider how legislative reforms to allow existing processes under the *Transfer of Land Act 1958* could be utilised to achieve some efficiency in regular dealings involving an Owners Corporation or Lots in a development. For example, why is a subdivision process required to swap carparks or storage areas within a building development, that does not change the land-use planning outcomes achieved at the site? Perhaps options available under the *Transfer of Land Act* could be used to reduce costs, processing time and red-tape for Lot owners and Owners Corporation managers.
- 2 **Area Determination:** While recognising that the Title Boundary location of a building subdivision is either a mix of external, median or internal face of a wall, we recommend that the internal face of the wall should be used as the basis of determining the Area of a Lot (Unit) for valuation purposes. This will give purchasers and Valuers a fairer understanding of the useable and habitable area determined for a Lot.
- 3 **Dealing with Infrastructure Assets:** Innovation and site design flexibility is often unnecessarily constrained by the demands of Service Authorities' in relation to the structures of a building subdivision. We believe that this is a regressive approach to the objectives of the Subdivision Act, taking Victoria back to practices previously undertaken as part of the Strata Subdivision process. For example, electricity Authorities' have recently started requiring common property within a development to be created over their assets, connection cables and pipes. However, previously these assets and their maintenance rights were protected via a well-established easement framework. The Authorities' requirements also cause unnecessary expense and project complexity on staged developments, where these assets are to be shared by the whole development. The Authorities' demands are based on their desire to simplify their transactions by making the Owners Corporation manager a point of contact. We believe that the Authorities' could achieve their administrative goals via minor amendments to



the *Owners Corporations Act* and the relevant infrastructure legislation, to protect and provide access to their assets without impacting the ownership structure, design of building subdivisions and effectiveness and clarity of the presentation of the Plan of Subdivision.

We would welcome the opportunity to meet and discuss these important issues in greater detail. I can be contacted on 9699 1400 or at [fbosco@bosjon.com.au](mailto:fbosco@bosjon.com.au)

Yours sincerely,



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General Manager  
Bosco Jonson Pty Ltd

