Consumer Property Law Review

Comments on options for reform of the Owners Corporation Act 2006 Owners Corporations

Peter Parsons

[redacted]

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 1B.

Government should be cautious about introducing additional regulation, and a step-by-step approach is preferred. If Option 1B proves not to deliver the preferred outcomes, then a higher level of regulation could be considered.

As a principle, owners should take the time and accept the responsibility for managing their own service providers, through effective oversight and enforceable contracts. There should be little or no need for a government to regulate an area that should be governed through normal contract law.

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

Option 1A

No comment.

Option 1B

The addition of a training requirement would appear to add little to owners corporation manager cost, and may add nothing to government administration expenses. Training ought be included within a manager's existing expense budget. Effective training and education for all employees is seldom wasted.

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

No comment.

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

Option 2B is preferred.

The relevance of training may lead to greater engagement with the training process by managers. If there was a way of determining areas where failure or non-compliance have been identified, and if the training addressed these known failures, then improvements may be expected. The Australian Taxation Office currently includes identified gap training as it seeks to improve knowledge (and therefore compliance) with legal requirements, particularly in the growing area of self-managed superannuation funds.

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?

No comment.

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?

Option 2A is not preferred. If Option 2A becomes the recommended option, there is evidence that training organisations will be unwilling to prevent themselves from exploiting such a scheme – irrespective of the best intentions that the regulators may have.

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

No comment.

8 Which option is fairer to both parties and why?

Option 3B is fairer to both parties.

Option 3B provides the minimum intervention in what should essentially be a normal commercial contract between two parties. In such a case, each party has a duty to inform themselves of the terms and conditions of the contract, and the implications of such terms and conditions.

Option 3A proposing to apply the provisions of the Australian Consumer Law should be avoided. A contract between an owners corporation and an owners corporation manager should not be a consumer contract. It is a commercial contract between two corporate entities, and should be treated as such.

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?

A contract between an owners corporation and an owners corporation manager should not prohibit terms, unless those terms are unconscionable, and found to be such by a court of competent jurisdiction. Information and the ability to make an informed choice is more important to arbitrarily making some contemporary mandates.

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

'reasonable notice' should be left for the parties to agree. However, if a period is required to be stated, then a notice period of 'not less than one month' is reasonable.

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

Termination under Option 3B:

a) If within the first year, by special resolution (i.e. 75 per cent majority) at a general meeting, which the manager would be entitled to address
b) If after the first year, by ordinary resolution at a general meeting, which the manager would be entitled to address.

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?

Yes.

Where a manager is responsible for expenditure of money held in trust for the owners corporation, there should be a continuous disclosure obligation such that the beneficial owners of the funds are aware that expenditure decisions are not being made on the basis of benefits received by the manager through the receipt of financial commissions or payments in kind.

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.

The elimination of pooled funds, and the practice of using a surplus from one owners corporation to fund the deficit in another owners corporation must be stopped. The proposal outlined in Option 4B are sufficient.

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

No unidentified consequences are apparent.

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?

The additional obligations under Options 5B, 5C and 5D are needed.

Developers are too easily induced into expanding their revenue streams to their own advantage, and to the disadvantage of other lot owners. The temptation to enter into developer-beneficial arrangements with managers and other service providers is simply too great. The cost is shouldered by lot owners, who have no power to alter the beneficial arrangements.

Option 5C together with the additional obligations, is preferred to reduce as much as possible, the incentives for developers to have an on-going revenue stream after the development is completed.

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?

The additional obligations are required to reduce as much as possible, the incentives for developers to have an on-going revenue stream after the development is completed. Developers should focus on development, not post-development management and service provision.

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

Caution should be applied to the adoption of Option 5D.

The majority of low owners are not building and construction experts. What may appear to be a defect to a lot owner may actually be "as-designed" and the apparent "defect" may be a result of ignorance.

A defects bond appears to be an additional amount, over and above the defects provision that will already exist in the construction contract. Administering the bond monies is likely to be expensive.

A report by an independent building inspector would be a useful way to eliminate bias by the developer and ignorance by lot owners on what manifests as a defect. The method of appointment of the building inspector needs to be articulated, and perhaps an appointment by the Institute of Architects Australia may be acceptable.

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?

For the reasons explained on comments to Option 6D in the answer to question 20, it is not desirable to make Model Rules on the proposed subjects.

However, the proposed Model Rules are based on reasonable presumptions, but how to codify these presumptions is problematic.

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

A Model Rule regarding the provision of advice on fire safety and the fire alarm system in unobjectionable. However the development of the fire safety advice and the specifics regarding actions to take in the event of a fire alarm should not form part of the Model Rules.

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

Option 6A

It is not clear why a fee should be payable by an owner for access to the records of the owners corporation. A copy of any record should be made available to any owner upon request. Any fee should be waived where the copy can be provided electronically.

I agree that the validity of resolutions and rules should be aligned. This may have simply been an omission in the original preparation of the current Act.

Option 6B

Strongly agree.

Option 6C

I agree with this option.

It is inappropriate for a lot owner, as an individual, to decide what is in urgent need of repair or alteration. It is subjective and may specifically counter the considered opinion and agreement of the owners corporation or committee.

Option 6D

Rules about smoke drift are difficult to quantify. Smoke is caused by smoking tobacco, other substances and cooking. Smoke density levels vary. The smell of smoke close to a lot may not affect the occupier of an adjacent lot, yet it may still be ruled against. An owner may complain about smoke drift, but actually live well away from the relevant lot, and not be affected when that owner is in their own lot. There is no easy answer and a detailed proposal is necessary before a considered response can be made.

Pets are currently permitted. Keeping some pets quiet may be a problem, and it is not clear that a rule will be effective. Would breaches of such a rule require a recording of an alleged infringement? Any change in this area will become extremely difficult to administer and enforce.

Renovation works are expected from time to time, and the temporary loss of quiet enjoyment is to be expected. An affected lot owner should be prepared to accommodate the disruption, otherwise the costs of renovation may become too high.

Access to common property and services: Agree.

Sustainability items: Strongly agree.

Rules should indeed form part of a lease agreement with a tenant. As owners are required to comply with the rules, so too should a tenant.

Option 6G

The owner should take ultimate responsibility for the action of the tenant. The owner should be responsible for selecting a tenant prepared to comply with the relevant rules of the specific owners corporation. If the tenant is not willing to comply with the rules, they should look for accommodation with rules that better meet their requirements.

The owner receives rental income from the tenant, and the owner therefore has the money with which to effect rectification of loss or damage to common property.

The owner has a greater vested interest in caring for common property than a tenant, who typically will not live forever in the tenancy.

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?

The owner should take ultimate responsibility for the action of the tenant. The owner should be responsible for selecting a tenant prepared to comply with the relevant rules of the specific owners corporation. If the tenant is not willing to comply with the rules, they should look for accommodation with rules that better meet their requirements.

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: A reformulation of committee member's duties along the line of the Associations Incorporation Reform Act is the preferred option.

An owners corporation should operate and be run like a small business or association. It is dealing with stakeholders funds. It is making decisions for stakeholders on a representative basis. All decisions should be in the best interests of the owners corporation. The overriding obligation to the owners corporation should be one of the bases for all decisions, otherwise there is a risk of self-serving decision that may be made, even if the existing criteria is fulfilled.

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?

Option 8A

"Community building" should not be a function of the owners corporation. This function is better undertaken by owners, outside the legislation. In reality, not everyone is engaged in the operation of the owners corporation. This function can too easily become a self-serving money pot for a few people who vote themselves benefits.

Option 8B

Common property should be extended to water rights of water falling or flowing on common property. There may be some unidentified unintended consequences but these are likely to be less than the uncertainty that currently exists.

Option 8C

Given that legislation currently exists for abandoned goods in similar situations, there are likely to be few unintended consequences of applying similar requirements to owners corporation common property. The change is supported.

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

The best approach is to apply similar provisions as exist in the Residential Tenancies Act. The owners corporation is the owner and is responsible and entitled to deal with common property, in a similar way that a landlord is entitled to deal with their property.

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

The benefits to take action regarding goods that block access is that common property can be more easily returned for the benefit of all owners. One lot owner should not be able to block access with abject disregard to other owners.

The risks are that an over-zealous owners corporation (but more likely a committee) becomes completely inflexible to some temporary infractions, where some latitude should be shown, and where no significant access costs actually occur. But, the infraction should clearly be temporary. It is not appropriate if blocking access becomes the entrenched or status quo condition.

Decision-making within owners corporations

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

The limitations proposed in Option 9A are supported.

The proposed limitation may have negative consequences only to the extent that owners corporations are inactive. In the event that a proposed decision does not obtain the necessary support such that it is defeated, then the defeat should act as a stimulant for lot owners to become more engaged in the activities of their owners corporation.

It is reasonable for committee proxies to be restricted to other committee members. Committee proxies have been used to effectively appoint to committees a member who was not appointed by the owners corporation. This may be seen as an abuse of the proxy process. In addition, the committee if often aware of background or details to a matter that a proxy is ignorant of, and any subsequent decision may be voted by the proxy in relative ignorance.

All lot owners should be granted equal rights, and a contract that creates two classes of owners should not be permitted.

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

Neither option is preferred.

This proposal seeks to address a symptom of the problem of inactive owners corporations. It does not address the root cause. Giving additional powers to owners corporation managers invites, and will lead to abuse that will be very difficult to remedy.

Please do not adopt either Option 9A or 9B.

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?

The risks of giving owners corporation managers are that:

a) Managers may be led by a small group of owners, who are not prepared to attend and vote at meetings, but can nevertheless achieve their opaque agenda, leaving the manager apparently responsible.

b) Managers may abuse their newly gotten power to enhance their benefits, at the detriment of lot owners.

Licencing or enhanced registration schemes do not mitigate the above risks.

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?

The alternative of deeming a resolution to be an interim resolution is the preferred alternative of Option 9C. However, neither alternatives of Option 9C are desirable. For Option 9C to be activated, a quorum needs to be present, so there is at least 50% of owners present (as attendees or by proxy). In that case, there should be no need to change the existing arrangements.

Weakening the requirements for passing a Special Resolution invites critical matters to be decided by an unrepresentative sample of lot owners. This may lead to outcome driven by special interest cliques.

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

A reduction in the size of a committee will reduce the length of discussions before a decision is taken, however a reduction in the size of the committee will reduce the opportunity for new people to participate. Having a small committee may be convenient for the entrenched committee members, but it risks a narrowing of views, information and alternative options. It is preferable to have committee membership open for as many lot owners as are will to participate. At the extreme, if all lot owners were also members of the committee, then decisions will genuinely represent the majority view.

Having a maximum committee size of 12 does not mean that there will be 12 nominees. Inevitable, not all committee members attend every meeting, and having a maximum of less than 12 will likely lead to decisions being taken that are not necessarily decision of the whole committee membership.

Ballots of the committee are a reasonable way to speed up certain decisions, and the proposal for a chairperson or a secretary to launch a committee ballot is supported.

However, a ballot is a resolution, and before a ballot is launched, it should have both a mover and a seconder. Without a mover and a seconder, then the risk increases that a chairperson or a secretary launches ballots on a whim, that are more like though bubbles. This should be avoided because a full and complete discussion and exchange of views, and modifications to the ballot question cannot occur. It may be also be worthwhile creating an interim ballot result, where the ballot decision is ratified at the next committee meeting, or where a period of no objection expires before the ballot decision is final.

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 11B is preferred. The use of an independent mediator overcomes the problem where a lot owner is in dispute with an owners corporation or committee, where the grievance committee is likely to made up of members of the original decision-making organ.

Extending the maximum time to hold a dispute resolution meeting from 14 to 28 days is supported.

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

The increase in the maximum civil penalty amount is supported. A higher penalty amount may make some residents and lot owners from breaching agreed rules.

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

Option 12B is not supported.

Providing owners corporations with the power to impose fines is not desirable. It is open to selective application of fines and victimisation of certain owners or classes of residents.

If owners corporation are to be given the power to impose penalties, then that power should not be extended to a committee. Any fine should be a decision of the owners corporation by way of a general resolution.

Option 12C is supported.

Any penalty should be paid to the owners corporation, who is likely to be the injured party, not to the Victorian Property Fund.

A right of appeal to VCAT should be included, with the proof onus placed on the owners corporation.

Option 12D is not supported.

The financial benefit of a penalty should be to the owners corporation.

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?

Option 13A is preferred.

Reducing the threshold to commence legal proceedings, with the protection that legal costs are still capped unless a special resolution is approved.

Option 13B is not preferred.

Creating a subclass threshold of 66% introduces unnecessary complexity and is not so far different to 50% or 75%.

Option 13C is not preferred.

Although it is accepted that different courts may result in different costs, this is an artificial construct that has nothing to do with the merits of an action. A court of competent jurisdiction is required, irrespective of the costs, if such a decision is made, having reached the approval threshold within the owners corporation.

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?

If Option 13A was adopted, then the VCAT authorisation requirement is not necessary.

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?

If Option 13B is considered appropriate (which it is not), then a reduction to 60% is better than 75%, but not as good as 50%.

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?

No comment.

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?

No comment.

Finances, insurance and maintenance

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

Option 15A is not supported.

The payment of a bond introduces a level of complexity that is unlikely to resolve late payments. Late payments are generally limited to serial offenders, and are normally in excess of one quarter of the annual fees payable. A bond would simply be exhausted in the first quarter, and nothing would change in actions of systemic later payers.

Option 15B is not supported.

Every late payer would claim financial hardship. It should not be the responsibility of the owners corporation to investigate and adjudicate on what constitutes "financial hardship". This option also introduces subjective decisions, where one lot owner is assessed differently to another lot owner.

Option 15C is supported.

Often, much time, effort and expense go into pre-litigation debt collection costs, and there is no incentive for lot owner to pay more quickly. The cost is therefore borne by the other lot owners. A delayed payment is a saving for the defaulting lot owner. For the other lot owners, there is both an opportunity cost and a financial cost for a lot owner not prepared to pay on time.

Option 15D is supported.

VCAT provides a low-cost resolution mechanism, but most often, overdue accounts are from lot owners simply gaming the system. Late fees have little to do with disputes, and more to do with a lack of incentives to pay, leaving others to carry the burden.

Option 15E is supported.

There needs to be increased incentive for recalcitrant lot owners to pay overdue fees, and for owners corporations to fairly recover costs incurred to maintaining equity and fairness within the community.

Option 15F is supported and preferred.

There needs to be increased incentive for recalcitrant lot owners to pay overdue fees, and for owners corporations to fairly recover costs incurred to maintaining equity and fairness within the community.

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

A fee bond (which is not preferred and not useful), should be set by the owners corporation. This will enable the owners corporation to set a bond that is consistent with the past payment history of a recalcitrant lot owner. The problem is, that a reasonable bond may end up being several year's worth of fees, making it difficult to fund for a late paying lot owner.

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

A maximum bond should be set out in the Act, and should be no more than 2 years of the current fee rate.

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

Fee bonds should be held by the owners corporation manager, as a pre-payment line item in the accounts of the owners corporation, to the credit of the relevant lot owner.

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

The owners corporation should be able to recover the actual costs associated with recovering debts. Whether the debt is large or small, the principal that lot owners should not abuse the good will of on-time payers is independent of the amount of the debt.

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 15F is a better alternative to Option 15E. Option 15F is fair insofar as it recognises the actual costs of debt recovery. In supporting Option 15F, we need to recognise that reminder notices and final notices still form necessary preliminary debt collection steps, so the legal costs should come as no surprise the late payer.

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

The proposal to increase the minimum public liability insurance amount is not supported.

Minimum insurance is preferred. The concept of insurance (shared risk) is a flawed concept for owners corporations who are diligent. The well-run owners corporations end up paying for the less well-run owners corporations. Whilst accepting that insurance is part of contemporary society, and payments are less than premiums (with the difference accruing to insurance companies and their associates), a mandatory increase in the cover amount is neither justified nor desirable.

Professional indemnity insurance is not required for committee members. The current provisions are adequate.

Contents insurance should be left to the individual owners corporation to decide and does not require legislation.

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

Option 16B is preferred to Option 16A, excluding the increase in the insurance amount.

Whilst disputes may occur, once resolved, they will establish a new status-quo for the future. The disputes are transitory, whereas the benefits are perpetual.

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?

Agreement may be reached between a lot owner and the owners corporation without the need to defer to VCAT. Agreement without the need to engage VCAT should be preferred. VCAT should only be necessary if the aggrieved party seeks a remedial order.

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

Options 17A and 17B are preferred.

All options need to recognise that a maintenance plan is only a plan, and that unforeseen events can occur. A contingency proposed in Option 17C should not be necessary if the plan is robust. If an unplanned event occurs, it may be possible to fund it from within the existing budget, pushing out other less urgent items, and avoiding a special levy. Owners corporations may well decide to include a contingency as a precautionary line item in the plan, but it is not necessary to mandate it in the legislation.

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?

A fixed proportion of fees set aside for the implementation of the maintenance plan is not preferred.

Each building is different. For example, a heritage building may be significantly more expensive to maintain than other types of buildings. Establishing a fixed rate for maintenance is going to over-shoot and under-shoot all but the average building (whatever that is).

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?

The amount to be set aside to fund the maintenance plan should definitely be only a general resolution.

The Act should include a requirement that the amount be adequate to fund the maintenance plan.

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

A fixed proportion of fees for the maintenance plan is only relevant for an average building (whatever that is), as it does not take into account the age, type, location or condition of the building. A fixed proportion of fees is not supported

A fixed proportion of fees for contingency is not supported. The amount of contingency will be most affected by the comprehensiveness and completeness of the maintenance plan. As time goes by, owners corporations will gain more experience, allowing the maintenance plan to be fine-tuned, and thus reducing the likelihood of need to draw from the contingency amount.

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?

Option 18 will be impossible to cost-effectively administer and will create a dispute every time it is applied. Option 18 is not supported. Even if criteria were to be established to assess the differential costs, the criteria would be extremely difficult to administer and impossible to agree.

The pragmatic and easiest way to resolve the differential costs is to share the cost burden equally. It is accepted that the benefit may not be shared evenly, but that should be seen as a cost (or benefit) of owning a lot in a particular subdivision.

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?

The use of a common seal provides the recipient of the transaction document with the confidence that the document has the authority of the owners corporation, and not simply the agreement of two committee members acting as a clique.

If the requirement to use the seal was withdrawn, then some other mechanism should be introduced, such as a resolution in the agreed minutes of the owners corporation providing the authority of the signatories to enter into the transaction.

54 How much should developers' property rights regarding initial settings of lot liability and entitlement give way to considerations of fairness?

Fairness should take priority. The developer should expect to earn a return on the development of the subdivision, but on-going gouging of new owners should be strictly limited.

Lot liability and entitlement should be determined by equality of size. A lot may be more valuable (for example because of its views), but values may change (for example, when the view are blocked). Accordingly, the liability established at one point in time may not be relevant in another point in time. However, lot size is provides a more stable basis from which to calculate lot liability.

Option 20A is not preferred.

Developers have too much of a vested interest in securing for themselves benefits, at the cost of eventual lot owners.

Option 20B is not preferred.

Simple principles are too often abused, and too easy to construct a Potemkin village to hide behind.

Option 20C is preferred.

Detailed principles provide the right balance of prescription to enable some flexibility for unusual or uncontemplated subdivisions.

Option 20D is not preferred.

Option 20D is too prescriptive and may result in sub-optimal outcomes for unusual or uncontemplated subdivisions.

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 20C is preferred.

Detailed principles provide the right balance of prescription to enable some flexibility for unusual or uncontemplated subdivisions.

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)?

Under no circumstances should a developer implement Options 20B to 20D.

57 To what extent should the surveyor (or developer) be required to set out how the criteria were applied in achieving the settings?

A surveyor should set out how the criteria were applied to achieve the settings in all circumstances. The current opaqueness in the setting of lot liabilities and entitlements is the cause of angst. If the criteria were known, then it improved transparency of the process and provides an incentive for the surveyor to act fairly.

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.

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 owner is more likely to oppose a change to the lot entitlement or liability where the majority lot owners believes it will suffer a loss. However, the majority lot owner should not be entitled to use its majority position in the exercise of power to the disadvantage of the other lot owners. The proposed reform process for VCAT applications provides the opportunity for an independent assessment and decision to resolve a dispute where a power imbalance exists. The proposal is supported.

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 21E-1 is preferred.

All other Options, which permit a majority of lot owners to force other lot owners out of their homes is unfair the minority. It is not relevant if there is oversight by VCAT or not. The exercise of this degree of power by 75% of lot owners should be strongly opposed.

The private property rights of all individuals should be respected. If unanimous agreement cannot be obtained by the developer, then it is for the developer to approve the offer (in one way or another). Coercion should also not be permitted (such as the use of threats, thugs, violence or intimidatory tactics).

61 Under Option 21D, which voting thresholds and VCAT processes are preferable, and why?

Voting thresholds are not relevant. Indeed, it is arguable that a building 100 years old should require greater than 75% acceptance. If less than unanimous decisions are accepted, then VCAT involvement should always be required.

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

Option 21E-1 is preferred. This option provides greater fairness to the minority group.

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?

The burden of proof to dislodge owners from property fairly purchased, for which there is an expectation of ongoing rights, should always be on the respondent.

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

No comment.

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?

No comment.

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?

No comment.