Review of Vic strata laws
Options Paper 1, Nov 2016
Owners Corporations Act 2006

Submission 16 December 2016

About Strata Community Australia (Vic) Inc.
SCA (Vic) is the pre-eminent professional association of the owners corporation industry, and was formed in 1990 to provide a forum for improved standards and education in the industry. Supporting more than 80% of all owners corporation managers it is the only organisation solely focused upon representing this increasingly significant industry, and reaches and represents 560 owners corporation professionals who manage approximately 375,000 lots. It also represents industry suppliers and owners corporations, making it the voice of all with an interest in the management of owners corporations. Members benefit from representation, promotion, establishment of professional practice guidelines and ethical standards, and professional development through education seminars, conferences and regularly publishing bulletins on items of professional interest. SCA (Vic) is a Corporate Member of SCA, which represents practitioners throughout Australia. The national and all state and territory strata industry bodies around Australia have the same brand and names, and continue toward increasing national alignment, co-ordination, collaboration and integration. More information about the Associations is available at www.vic.stratacommunity.org.au and www.stratacommunity.org.au

About the owners corporation or strata title industry in Victoria
Changing lifestyle choices of Victorians and demographic shifts have led to rapid growth in higher density dwellings and the owners corporation industry. With 88,475 owners corporations and 747,336 lots in Victoria and about 1,500,000 Victorians or 1 in 4 people living in or affected by owners corporations, it represents the management of property worth $300 billion. More than $1 billion per year is collected and spent. They comprise residential properties ranging from 2 units in a suburban street to many hundreds of units in inner city apartment buildings. Owners corporations also encompass commercial, retail, lifestyle resorts, retirement villages, car parks, storage facilities, industrial and, increasingly, mixed developments comprising more than one form of development.

The prevalence and importance of the strata sector is increasing. In 2014, the Vic Government's Plan Melbourne strategy says we need an extra 1.6 million dwellings by 2051 and 66% of these would be apartments or townhouses. That is, 66% is to be strata and only 34% would be detached houses.

50% of all plans registered by Land Victoria in 2013-14 were strata ie owners corporations.

Owners corporation managers facilitate the management of:
- People in a community living environment
- Billions of dollars of other people's money on an on-going and not a single transaction basis
- Entire communities and their current and future assets and facilities

About the owners corporation or strata title industry in Australia
The industry continues to grow rapidly in Australia with around 270,000 owners corporations comprising 2,000,000 lots Australia wide. It represents the management of property worth $1.2 trillion*. There are approximately 3,300 owners corporation managers in Australia; with 3.5 million people living or working in owners corporation schemes. Conservatively, it is estimated 20,000 Australians work in and derive their income from the strata title industry. Urban planning policies around Australia are targeting annual growth of more than 10% for the next 15-25 years, so the prevalence and importance of this sector is increasing.

*In comparison, the total value of Australian superannuation is $2t, and Australian listed stocks is $1.7t.

Background

The then Minister for Consumer Affairs, announced at the CHU SCA (Vic) Symposium on 21 Aug 2015, a full review of the operation of the Owners Corporations Act 2006.

This is a post implementation review, about 8 years after it was completely changed, and is a full public review.

Our full Policy Position document covers the SCA (Vic) position on all owners corporation matters. These policy positions proactively inform and assist this review with possible areas of improvement and research to support the suggestions.

There were 3 Issues Papers:

1. Issues Paper 1, Dec 2015: Conduct & institutional arrangements for estate agents, conveyancers & OC managers;
    - Note: this re-presents issues from a previous review whose outcomes were contained in the draft 2014 Bill regarding the review of the regulation of strata managers.
2. Issues Paper 2, Mar 2016: Owners Corporations [general]
3. Issues Paper 3, Apr 2016: Sale of land and business

The Options Paper is available on the CAV web site
consumer.vic.gov.au/consumerpropertylawreview

This submission should be read in conjunction with the Options Paper, as well as the SCA (Vic) submissions to the first 2 relevant Issues Papers.

Important note:

The positions recommended in this submission do not reiterate in full the same case again here. Refer back to our submissions to the Issues Papers.

SCA (Vic) congratulates the government on the Options Paper which is excellent, eminently elegant, succinct, incisive, and well considered.

The Options Paper says that proposals for legislative amendments are planned to be considered by Parliament in 2018. If so, the Owners Corporations Regulations 2007 automatically sunset 10yrs after being made, so if they have not been reviewed and remade before 4 December 2017 they cease to exist. There will be a need to at least temporarily extend the Regulations until the legislative review process is complete.

Executive Summary

The Options Paper proposes sweeping reforms. SCA (Vic) is extremely pleased that the government has listened to all of our policy positions with the Options Paper.

In carefully choosing the options, SCA (Vic) has not automatically defaulted to choosing the option that is the most "high touch" regulatory option representing the most change.

Regulation of owners corporation managers

Licensing versus registration of owners corporation managers

Alternative options

- ☒ **Option 1A** – Introduce a full licensing scheme for professional owners corporation managers.
- ☐ **Option 1B** – Enhance the current registration scheme for professional owners corporation managers.

Maintaining the knowledge and skills of owners corporation managers

Alternative options

- ☐ **Option 2A** – Mandate continuing professional development for owners corporation managers as a condition of being licensed or registered.
- ☒ **Option 2B** – Deliver an ongoing and targeted information and training program for owners corporation managers in partnership with industry associations.

Unfair terms and termination of management contracts

Alternative options

- ☒ **STATUS QUO** – No change

  Failing that, then:

- ☒ **Option 3A** – Prohibit unfair terms in management contracts.
- ☐ **Option 3B** – Simplify the termination of management contracts 'without cause'.

Duties and obligations of owners corporation managers

Conflicts of interest, voting conduct and transparency

Stand-alone option for conflict of interest

- ☒ **Option 4A** – Expand the obligations of owners corporation managers regarding procurement of goods and services, voting on owners corporation matters, and access to financial documents.

Money held on trust and pooling of funds

Alternative options for money held on trust

- ☒ **Option 4B** – Restrict the pooling of unrelated owners corporations' funds.
- ☐ **Option 4C** – Require moneys held on trust by owners corporation managers to be kept in regulated trust accounts.

Responsibilities of developers, occupiers and committee members

Developers' obligations

General obligations

Alternative options for developers' obligations

- ☐ **Option 5A** – Extend the duration of the existing developers' obligations.
- ☐ **Option 5B** – Extend and expand developers' obligations in line with the Queensland approach.
- ☒ **Option 5C** – Extend and expand developers' obligations in line with the New South Wales approach.

Obligations regarding building defects

Stand-alone option for building defects

- ☒ **Option 5D** – Introduce specific obligations for developers regarding building defects.

Duties and rights of owners and occupiers

Stand-alone options

Resolutions and records

- ☒ **Option 6A** – Clarify the right to inspect owners corporation records and align the basis for invalidating resolutions and rules.

Access to private lots

- ☒ **Option 6B** – Give owners corporations access to private lots to repair common property.

Alterations and repairs to common property

- ☒ **Option 6C** – Prohibit lot owners from making alterations or repairs to common property.

Rule-making powers and Model Rules

- ☒ **Option 6D** – Expand rule-making power to enable rules to be made, for pets, smoke drift, renovations and access to common property.
- ☒ **Option 6E** – Make Model Rules for smoke drift, renovations and access to common property.
- ☒ **Option 6F** – Develop a Model Rule for fire safety advice to tenants and provide for owners corporations rules to be part of tenancy agreements.

Responsibility for compliance with owners corporation rules

- ☒ **Option 6G** – Make lot owners ultimately responsible for compliance by their tenants and guests with owners corporation rules.

Duties of committee members

Alternative options

- ☒ **Option 7A** – Expand the existing duties of committee members to include a duty to act in the owners corporation's best interests.
- ☐ **Option 7B** – Reformulate the duties of committee members according to the Associations Incorporation Reform Act model.

Powers of owners corporations regarding community building, water rights and abandoned goods

Stand-alone options

Community building

- ☒ **Option 8A** – Give owners corporations a community building function.

Water rights

- ☒ **Option 8B** – Permit owners corporations to deal with water.

Abandoned goods

- ☒ **Option 8C** – Permit owners corporations to dispose of abandoned goods on common property.

Decision-making within owners corporations

Voting thresholds and the use of proxies

Stand-alone options

Proxies and voting limitations

- ☒ **Option 9A** – Restrict proxy farming and committee proxies, and prohibit voting limitations in sale contracts.

Decision-making powers for managers

- ☒ **Option 9B** – Give owners corporation managers greater authority to make decisions.

Special resolutions

- ☐ **Option 9C** – Treat unopposed special resolutions as passed or as interim resolutions.
- ☒ **STATUS QUO** – No change

Committee size and processes

Stand-alone options

Committee size

- ☒ **Option 10A** – Reduce the maximum committee size from 12 to seven members.

Committee ballots

- ☒ **Option 10B** – Permit the chair or secretary of the committee to arrange a ballot.

Dispute resolution and legal proceedings

Internal dispute resolution process

Stand-alone options

Matters initiated by owners corporations

- ☒ **Option 11A** – Exempt owners corporations from the need to engage the internal dispute resolution process for matters they initiate.

Dispute resolution Model Rule

- ☒ **Option 11B** – Revise Model Rule 6 (Dispute Resolution).

Civil penalties for breaches of owners corporations rules

Civil penalty maximum amount

Stand-alone option for the amount of civil penalties

- ☒ **Option 12A** – Increase the maximum civil penalty to $1,100.

Imposition and payment of civil penalties

Alternative options for the payment of civil penalties

- ☐ **Option 12B** – Allow owners corporations to impose and retain penalties.
- ☐ **Option 12C** – Retain VCAT's power to impose penalties but allow owners corporations to retain penalties.
- ☒ **Option 12D** – Allow owners corporations to impose penalties but retain the requirement to pay civil penalties to the Victorian Property Fund.

Initiating legal proceedings

Alternative options

- ☐ **Option 13A** – Lower the threshold to an ordinary resolution for any legal action.
- ☐ **Option 13B** – Lower the threshold to two-thirds support for any legal action.
- ☒ **Option 13C** – Apply different thresholds for actions in different Courts.

Differential regulation of different-sized owners corporations

Alternative options

- ☐ **Option 14A** – Introduce three new tiers of owners corporations.
- ☒ **Option 14B** – Introduce a four tiered system of owners corporations.

Finances, insurance and maintenance

Defaulting lot owners

Stand-alone options for debt recovery

- ☐ **Option 15A** – Require lot owners to lodge bonds for unpaid fees.
- ☒ **STATUS QUO** – No change

- ☐ **Option 15B** – Permit owners corporations to adopt payment plans in 'hardship' cases.
- ☒ **STATUS QUO** – No change

- ☒ **Option 15C** – Permit owners corporations to recover pre-litigation debt collection costs from lot owners.
- ☒ **Option 15D** – Permit VCAT to make default judgements.

Alternative options for litigation costs

- ☐ **Option 15E** – Align VCAT's costs power with those of the Magistrates Court.
- ☒ **Option 15F** – Empower VCAT and courts to award all reasonable costs.

Insurance

Alternative options

- ☐ **Option 16A** – Increase the level of public liability insurance and correct anomalies concerning plans of subdivision that contain separate buildings.
- ☒ **Option 16B** – Option 16A plus allowing the owners corporations to impose a range of levies relating to insurance issues.

Maintenance plans and maintenance funds

Stand-alone options

- ☒ **Option 17A** – Introduce new thresholds for mandatory maintenance plans and funds.
- ☒ **Option 17B** – Require mandatory funding of mandatory maintenance funds.
- ☒ **Option 17C** – Introduce mandatory contingency plans and funds for Tier 1 owners corporations.

Increased expenditure arising from lot use

Stand-alone option

- ☒ **Option 18** – Allow owners corporations to recover costs arising from particular uses of lots.

Part 5 of the Subdivision Act

Common seals

Stand-alone option

- ☒ **Option 19** – Remove the requirement for an owners corporation to have a common seal.

Procedure for initial setting of and changes to lot liability and lot entitlement

Initial settings of lot liability and entitlement

Alternative option for initial setting of lot liability and lot entitlement

- ☐ **Option 20A** – Retain the developers' discretion but place a time limit on their application.
- ☐ **Option 20B** – Apply the current criteria for *changes* to lot liability and entitlement to *initial* settings – simple principles.
- ☐ **Option 20C** – Set lot liability and entitlement according to more detailed principles.
- ☒ **Option 20D** – Set lot liability and entitlement according to specified criteria.

Current provisions for changes to lot liability and entitlement

Stand-alone option for changing lot liability

- ☒ **Option 20E** – Improve the current provisions for changes to lot liability and entitlement.

Sale and redevelopment of apartment buildings

Alternative options

- ☒ **Option 21A** – Reduce the threshold to 75 per cent for all owners corporations - New South Wales model.
- ☐ **Option 21B** – Reduce the threshold to 75 per cent for all owners corporations - less restrictive model.
- ☐ **Option 21C** – Adopt a tiered approach to the threshold according to building age - Northern Territory four-tiered model.
- ☐ **Option 21D** – Adopt a tiered approach to the threshold according to building age - simpler three-tiered model.
- ☐ **Option 21E** – Reduce threshold to 75 per cent for commercial buildings only.

Retirement villages with owners corporations

Alternatives for reform

- ☐ **Option 22A** – Require separate committees for owners corporations and retirement village residents.
- ☒ **Option 22B** – Require separate committees and annual general meetings for owners corporations and retirement village residents.

Responses to consultation questions

Regulation of owners corporation managers

Licensing versus registration of owners corporation managers

Alternative options

- ☒ **Option 1A** – Introduce a full licensing scheme for professional owners corporation managers.
- ☐ **Option 1B** – Enhance the current registration scheme for professional 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?

Option 1A. For all the reasons outlined in the Options Paper.

It essentially has these features:

Individuals

A. Qualification[1]

B. PI insurance[2]

C. Increased disqualification/ineligibility criteria

Corporations

- ≥ 1 Director – has to be a licensed Individual
- Other Directors - has to be a licensed Individual, but excluding A – the Qualification

Option 1B essentially has these features: Just B & C [not A – the Qualification].

[1]Qualification – it appears that it may be saying it is just one level of Qualification whether for licensed Individuals or Corporations. Consider varying levels of Qualifications [eg Cert IV, Diploma] for Individuals versus Corporations.

The Australian Qualifications Framework now provides for a Certificate III, Certificate IV and Diploma in Strata Community Management. These new courses have been tailored to the strata sector, recognising as does CAV, that the duties and responsibilities of a strata manager are vastly different to that of an estate agent or other property representative.

[2]PI insurance – this may be misconceived in that Corporations hold PI insurance, not the Individual employees. Only a tiny fraction of currently registered strata managers, are registered as Individuals [rather than Corporations].

It is also submitted to minimise the impact on currently operating registered strata managers, that a licence for a corporation, require the qualification to be held by either a 'Director or Nominee'. In effect this will allow the business to dictate whether it is a Director that is 'hands on' managing staff or alternatively, their appointed nominee; ie an officer in effective control.

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

What is listed is sufficient.

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

Appropriately, it is saying there is no grandfathering of existing strata managers [although only allows 1yr to do the Qualification].

The Certificate IV Property Services [Operations] has to date been the relevant strata specific qualification. This strata specific qualification has just been amended to the Certificate IV in Strata Community Management [CPP40516].

It is submitted that narrow, specific transitional arrangements should include qualification grandfathering of those that completed the predecessor equivalent qualification.

As part of our accreditation system, this level of qualification is also the prerequisite for strata managers to hold the SCA (Vic) Post Nominal CPSM - Certified Practising Strata Manager.

It is also submitted that the transition period be extended to minimum of 2 years. This will minimise what we can see will have an adverse impact on the operation of existing businesses in the industry. As advised these qualifications have only recently been endorsed and adopted by the Australian Skills Quality Authority (ASQA), and is yet to be delivered by any Registered Training Organisation.

SCA (Vic) is currently partnering with RMIT to develop and deliver the new Certificate IV qualification for the first time; commencement proposed for January 2017. Extending the transition time will allow RMIT to further develop materials and build capacity to meet the current and foreseen strong market demand. An extension to the transition period will also better accommodate the time required to undertake the course; currently proposed as a 12 months duration.

Should licensing be tied to the Certificate III or Diploma level then a minimum of at least 3-4 years transition period would be necessary. These courses, also only endorsed this year by ASQA, are yet to be delivered or ready for delivery here in Victoria.

SCA (Vic) recognises that RMIT and other Registered Training Organisations (RTO) may offer Recognition of Prior Learning (RPL) to accommodate those who have the experience but do not currently hold the necessary qualification. This will ensure that the knowledge of licensed strata managers is at an acceptable standard and not compromised during the transition process.

Maintaining the knowledge and skills of owners corporation managers

Alternative options

- ☐ **Option 2A** – Mandate continuing professional development for owners corporation managers as a condition of being licensed or registered.
- ☒ **Option 2B** – Deliver an ongoing and targeted information and training program for owners corporation managers in partnership with industry associations.

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

Option 2B. For all the reasons outlined in the Options Paper.

It essentially has these features:

Option 2B has CPD as being offered but not mandatory [as opposed to Option 2A where CPD is mandatory]. Option 2B is chosen because, comparatively, it is:

- Less onerous and costly
- More flexible and timely
- Minimises overall burden and cost for industry

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?**

CAV, who was also the driver of National Licensing, is best placed to be able to answer this question.

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 2B, as the Options Paper argues, reduces this risk; in comparison to Option 2A.

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

That which was adopted for the proposed for National Licensing. Ie CPD is only required [mandated] on an as-needs basis eg legislative changes. Rather than saying Xhrs/yr.

Unfair terms and termination of management contracts

Alternative options

- ☒ **STATUS QUO** – No change

Failing that, then:

- ☒ **Option 3A** – Prohibit unfair terms in management contracts.
- ☐ **Option 3B** – Simplify the termination of management contracts 'without cause'.

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

Status quo. For all the reasons outlined in previous submissions.

Failing that, then we have chosen Option 3A.

The 2 options have these salient features:

Option 3A	Restrictions [ie prohibitions] on: - Term duration [eg maximum 3yrs] - Automatic renewal	Strata managers can sue for damages for wrongful termination
Option 3B	No restrictions/regulations on the above	OCs can terminate 'without cause' on reasonable notice [eg < 1 month] No right of compensation for strata manager [eg damages/termination fees]
	Under both options, VCAT would have the	power to rule on unfair terms as per ACL

If one of the options listed is to be chosen, we have chosen Option 3A because Option 3B would:

- Be too destabilising for the whole sector
- Lead to excessive 'churn' and poor outcomes akin to that experienced in the utilities sector
- Mean that strata managers wouldn't be able to charge appropriately/equitably; because the standard functions of a strata manager are very unevenly spread throughout the year. The effort required is 'lumpy' and only estimable over a period not less than 1yr.

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?

It lists 5 types of terms. We agree with prohibiting 3 of these types of terms; and disagree with prohibiting 2 of them. For all the reasons outlined in previous submissions.

The 2 we disagree with are:

- Term duration [eg maximum 3yrs]
- The proposed terms of Automatic renewal

Regarding automatic renewal, the Options Paper says this could be eg monthly, quarterly, or some other basis. The most appropriate is the 'other basis' which should be: the Contract of Appointment continues for 1yr, but not later than the date of the next AGM. Failing that, at worst, it should be quarterly.

Regarding the example type of term listed in this question, pre-determined fees, this should not be prohibited. For the reasons outlined both in the example, and in our previous submissions. Rather than prohibit, instead let VCAT rule on their fairness.

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

Yes. [NB: we do not agree with Option 3B, but if it's chosen, we have answered]

Because otherwise no one will know what is 'reasonable' notice.

In terms of how long it should be, it should be for the maximum length possible [eg quarterly, or at worst, 1 month].

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

[NB: we do not agree with Option 3B, but if it's chosen, we have answered]

There are 3 examples listed.

The best and fairest is:

- After first year. By ordinary resolution at GM, which the manager is entitled to address

The next, 'least worst' alternative to choose is:

- Any time. But only by special resolution at GM, which the manager is entitled to address

SCA (Vic)'s key concern is the inability for all lot owners to have the opportunity to contribute to such a decision; ie at a general meeting (in person or by proxy) or by ballot.

Duties and obligations of owners corporation managers

Conflicts of interest, voting conduct and transparency

Stand-alone option for conflict of interest

- ☒ **Option 4A –** Expand the obligations of owners corporation managers regarding procurement of goods and services, voting on owners corporation matters, and access to financial documents.

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.

They are all reasonable and appropriate.

Appropriately, it does not and should not list a need for a mandatory number of quotes being required. It is worth reinforcing that this should not be a mandated requirement. Mandating a minimum number of quotes may unintentionally lead to decisions made solely on price.

Proposal of the previous Bill (Consumer Affairs Legislation Further Amendment Bill 2014) would suffice to ensure that duties include that the OC and OC manager must take reasonable steps to ensure that any goods and services procured are procured at competitive terms.

Money held on trust and pooling of funds

Alternative options for money held on trust

- ☒ **Option 4B** – Restrict the pooling of unrelated owners corporations' funds.
- ☐ **Option 4C** – Require moneys held on trust by owners corporation managers to be kept in regulated trust accounts.

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, because the 'light touch' regulation of requiring separate bank accounts is sufficient to address the issues.

Also because, in anticipation of the enactment of the 2014 Bill, the majority of strata managers that had pooled bank accounts have already transitioned to individual bank accounts.

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

The unintended consequences of Option 4C, statutory trust accounts [ie extra regulation] are:

- Significant cost for government to setup and supervise; and for industry
- As the Options Paper outlines, this does not, per se, eliminate the possibility of fraud or misappropriation
- The cost to industry, because as outlined in Q13, the sector has already transitioned once and adopted Option 4B

Responsibilities of developers, occupiers and committee members

Developers' obligations

General obligations

Alternative options for developers' obligations

- ☐ **Option 5A** – Extend the duration of the existing developers' obligations.
- ☐ **Option 5B** – Extend and expand developers' obligations in line with the Queensland approach.
- ☒ **Option 5C** – Extend and expand developers' obligations in line with the New South Wales approach.

Obligations regarding building defects

Stand-alone option for building defects

- ☒ **Option 5D** – Introduce specific obligations for developers regarding building defects.

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 5C. For all the reasons outlined in the Options Paper.

Important proviso: Option 5C was chosen as a 'package' of 3 changes, even though we strongly disagree with including the one saying that the initial strata manager contract length be limited to a maximum 1yr term. Only include 2 of the 3 expanded obligations [for all the reasons outlined in previous submissions].

Option 5A [light touch] is not sufficient. Options 5B and 5C have these salient features:

Option 5B	Medium touch	Any agreement must be fair
Option 5C	High touch [& much more detailed]	Bans developers being strata managers Initial strata manager contract length limited to a maximum 1yr term Any non strata manager agreements limited to a maximum 3yr term
	Additional	developer obligations listed could apply for both of these options

Note also that should initial management contracts be limited to a one year term, the unintentional consequence will be that management fees for an OC's first year will have to be increased to cover the actual costs to be incurred. The practice of managing a new strata complex in its first year always demands more time and increased duties. The cost is generally balanced out across the settling of duties and demands in the second to third year only. As an example, settlements of all lots will occur increasing general strata inquiries, implementation of the key and access systems, managing moves of all residents into the property over a short period of time, management of the defect process, warranties and even management of the numerous trades and service providers requiring access to the property and its plans, not to mention general meetings and more frequent committee meetings. Whilst these duties are still required in the following years, they are generally more infrequent.

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?

Yes. Adopt all the additional developers obligations listed.

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

Option 5D.

Defects are a significant and systemic issue in the strata sector. We have previously made submissions citing defect examples of some of our members – 58 buildings, with the costs of defects in excess of $49 million.

Academic research by UNSW in 2012 [which was for NSW but the Vic anecdotal experience is similar] found that 72% of buildings had defects. For newer buildings built since 2000, it was 85%.

Costs of rectification fall back onto the OC to pay for them. Commercial realities also mean that, many times, defects are not legally pursued for damages and instead OCs pay the rectification costs to fix the defects themselves. The injustice is that owners should not be left with a bill for the mistakes of others.

Option 5D, using the NSW approach, has these features:

- Developer pays a 2% defects bond for surety
- Developer to fund an independent defects [ie building inspection] report [within first 2yrs]
- Developer can't vote on defects

The Options Paper outlines that these specific obligations could either be an alternative, or in addition to the alternative option chosen from 5A/B/C. It should be in addition [not as an alternative].

Duties and rights of owners and occupiers

Stand-alone options

Resolutions and records

- ☒ **Option 6A** – Clarify the right to inspect owners corporation records and align the basis for invalidating resolutions and rules.

Access to private lots

- ☒ **Option 6B** – Give owners corporations access to private lots to repair common property.

Alterations and repairs to common property

- ☒ **Option 6C** – Prohibit lot owners from making alterations or repairs to common property.

Rule-making powers and Model Rules

- ☒ **Option 6D** – Expand rule-making power to enable rules to be made, for pets, smoke drift, renovations and access to common property.
- ☒ **Option 6E** – Make Model Rules for smoke drift, renovations and access to common property.

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?

a) Yes.

b) Yes, and Yes [ie they are unobjectionable and adequate].

Option 6D – important proviso [pets]

Stand-alone Option 6D was chosen as a 'package' of changes, even though we strongly disagree with a change that would enable rules to prohibit pets.

Option 6E – important proviso [pets]

Stand-alone Option 6E is saying that the Model Rule on pets is to be removed.

Given the inconclusive nature of the feedback, as noted in the Options Paper, it is appropriate that, instead of *any* change, the appropriate response is *no change*. Ie Status Quo [the Model Rule on pets remains, unchanged].

Given the change to remove the pets Model Rule would be a terrible outcome, if change is intended to be chosen, then we would be open to anything [eg NSW approach of 3 alternative Model Rules].

Brief general comment regarding pets

The freedom to keep a companion animal is central to many people's lives and well being, and the inability to keep a pet is a source of significant distress and subsequent litigation in strata schemes. If we are committed to the values of liberal democracy we must concede that our own view of pets is irrelevant to the question of whether someone else is allowed to keep one. What others do in their own home is their business. The only way that it will become our business is if what they do disturbs us. Strata title runs the very real risk of fostering intolerance if rules are allowed that implement blanket restrictions on pets or pet restrictions based on size or weight.

Revoking old 'Model Rules'

When the old laws were changed to the current laws, it should have but inadvertently did not revoke the "Standard Rules" from the old Subdivision (Body Corporate) Regulations 2001. So, as well as remedying this, any new version of the Model Rules should be a replacement by revoking the existing version of the Model Rules.

Renovations to lots

Regarding renovations, it is proposed to expand the rule making power to enable a rule for renovations; and to make a Model Rule for renovations.

The Options Paper lists 3 possible alternatives for the form of such a Model Rule.

We recommend choosing the third alternative listed. Ie Develop a Model Rule that prohibits any change without the OC's approval, which must not be unreasonably withheld.

The recommended content of the rule could accommodate the suggestions of the first option proposed; ie the Model Rules should offer protection for the quiet enjoyment of other occupiers during building works, provide for protection of the structural integrity of the building and value of other lots. This could assist assessment of what may be reasonable /unreasonable in an OC providing or withholding consent. It would also tie in with the lot owners and OCs obligations to notify the insurer of the scope of renovations and assess any impact on the level of insurance provided and/or premium.

- ☒ **Option 6F** – Develop a Model Rule for fire safety advice to tenants and provide for owners corporations rules to be part of tenancy agreements.

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

Yes.

Because it would not be burdensome; and it would be in everyone's interest [both landlord and tenants].

Responsibility for compliance with owners corporation rules

- ☒ **Option 6G** – Make lot owners ultimately responsible for compliance by their tenants and guests with owners corporation rules.

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

All options improve the position of OCs.

In terms of 'why' – for all the reasons outlined in previous submissions.

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?

No additional justification is necessary.

But if so, as the Options Paper says in the Executive Summary:

- Apathy
- Inactive OCs

- Interdependency between lot owners

Strata law should differ from 'normal' property law only to the extent necessary to achieve policy objectives. This is needed in this case to achieve policy objectives.

Duties of committee members

Alternative options

- ☒ **Option 7A** – Expand the existing duties of committee members to include a duty to act in the owners corporation's best interests.
- ☐ **Option 7B** – Reformulate the duties of committee members according to the Associations Incorporation Reform Act model.

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?

Yes, it is sufficient to simply expand [Option 7A], with just one addition necessary. That committee members must disclose pecuniary interests related to the OC [eg in nomination form, and in the minutes]; and they can't vote on those matters where they have a pecuniary interest related to the OC.

To this extent if nominations to the committee are taken from the floor at the time of the meeting, the nominee should also be required to complete the nomination form the purpose of such disclosure.

Once again SCA (Vic) recommends it be a mandatory requirement for OCs who appoint a committee, to take out Office Bearers Liability insurance cover. Further expansion of a committee's duties and obligations high-lights the need for such cover to protect these individuals who volunteer their time and energy. SCA (Vic) has detailed this recommendation in our previous submissions.

Reformulating [Option 7B] is unnecessary [even though it also would be fine and is 'not bad'].

Powers of owners corporations regarding community building, water rights and abandoned goods

Stand-alone options

Community building

- ☒ **Option 8A** – Give owners corporations a community building function.

Water rights

- ☒ **Option 8B** – Permit owners corporations to deal with water.

Abandoned goods

- ☒ **Option 8C** – Permit owners corporations to dispose of abandoned goods on common property.

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?

Some risks or unintended consequences are possible, but the benefits [upside] far outweigh the costs [downside].

Public libraries are an analogous example. Citizens already have to pay for things they may not use, but are inherently good societal public services.

Similarly to the water rights issue, there may be other emerging issues eg electricity generated from solar panels and stored in batteries.

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

There are 2 approaches listed.

The best approach is the traders one [under the ACL], rather than the landlords one [under residential tenancies].

The traders approach [under the ACL] is the best approach because, comparatively, it is less restrictive/onerous and is more practical].

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

Some risks or unintended consequences are possible, but the benefits [upside] far outweigh the costs [downside].

Public libraries are an analogous example. Citizens already have to pay for things they may not use, but are inherently good societal public services.

Decision-making within owners corporations

Voting thresholds and the use of proxies

Stand-alone options

Proxies and voting limitations

- ☒ **Option 9A** – Restrict proxy farming and committee proxies, and prohibit voting limitations in sale contracts.

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

Stand-alone Option 9A.

Stand-alone Option 9A – important proviso [proxy farming]

Stand-alone Option 9A was chosen as a 'package' of changes, even though we strongly disagree with the change outlined in the first dot point to restrict proxy farming.

Restricting proxy farming would be counterproductive, despite its pure intentions.

In terms of what the negative consequences may be from limiting proxy farming, the risk outlined in the Options Paper is that it would reduce the capacity to achieve a quorum, as well as get resolutions passed.

Another is the perverse outcome that 'upstanding' owners of multiple lots should not be restricted in this way.

Worse still, perversely, is that those that want to game the system will continue to do so, if proxy 'farming' is restricted. Instead, it would see the rise of the similarly natured proxy 'crop-sharing' – where the proxies are redistributed among their hand-picked crony committee members.

Proxy farming is not a significant issue in Victoria. There is no material problem to solve. Restricting it would be a solution in search of a problem – in terms of unintended consequences.

SCA (Vic) support the second and third dot point in this option;

- Committee members would only be able to give a proxy to another committee member; and
- Terms in contracts of sale that limit or control the voting rights of the buyer would be prohibited.

Decision-making powers for managers

- ☒ **Option 9B** – Give owners corporation managers greater authority to make decisions.

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

Option 9B – 2. For all the reasons as noted in the Options Paper.

The Options Paper says a meeting cannot proceed if *no lot owner* is present in person or by proxy. Note that when drafting this consequent change, consider that it should say it is if there is 'no or only 1 lot owner'. This is because a valid meeting actually requires 2 people. A person can't have a meeting by themself.

Directed proxies: where a *directed* proxy directs the re-appointment of a strata manager, strata managers should be able to use the proxy [currently it's not allowed]. This is as opposed to *undirected* proxies.

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?

This is somewhat of a moot point.

Practically, it's already happening because OCs have to function somehow.

SCA (Vic) recognises that there are particular circumstances only, under which an OC manager may exercise this authority; ie in the absence of only one or no members attending a meeting in order to enable the OC to function and comply with its obligations under the OC Act. Any unfair exercise of this power may be taken to VCAT by the OC. If an OC is deemed dysfunctional, VCAT has the authority to appoint an administrator, to in fact make decisions on behalf of an OC.

Special resolutions

- ☐ **Option 9C** – Treat unopposed special resolutions as passed or as interim resolutions.
- ☒ **STATUS QUO** – No change

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?

No. STATUS QUO – No change.

The option does not appear to make sense.

Also, do not introduce new, additional, types of resolutions.

The status quo with respect to special resolutions is appropriate because it provides a safeguard of notifying people [as part of an interim special resolution process], and because special resolutions by their nature are a material decision.

General comment regarding 'inactive' OCs in this section of the Options Paper [and Q26 & Q29]

We previously disagreed with the 'inactive' concept being legislatively introduced. Notwithstanding that, and without being cute, we make the minor point about the wrong use of the term 'inactive', and could perhaps better be described as 'barely' active. For example, if an OC has a strata manager, then fees must be being raised, and hence by definition it cannot be 'inactive'.

Committee size and processes

Stand-alone options

Committee size

- ☒ **Option 10A** – Reduce the maximum committee size from 12 to seven members.

Committee ballots

- ☒ **Option 10B** – Permit the chair or secretary of the committee to arrange a ballot.

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

Reducing the size of the committee will help improve its functioning, for all the reasons as per our previous submissions, and the summary as per the Options Paper.

Option 10A says it would be 7 members but with provision for OCs to resolve on a larger committee, up to 12 members. Note the drafting of this will have to be specifically flexible enough to cater for the low portion of situations where there are [many] multiple OCs.

Providing for who can arrange a committee ballot will help improve its functioning, because it provides greater clarity.

Note for example, similarly to the comparison, that Option 10B will also need to clarify the strata manager can arrange a committee ballot.

Dispute resolution and legal proceedings

Internal dispute resolution process

Stand-alone options

Matters initiated by owners corporations

- ☒ **Option 11A** – Exempt owners corporations from the need to engage the internal dispute resolution process for matters they initiate.

Dispute resolution Model Rule

- ☒ **Option 11B** – Revise Model Rule 6 (Dispute Resolution).

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?

Very well. It will be a big improvement.

Civil penalties for breaches of owners corporations rules

Civil penalty maximum amount

Stand-alone option for the amount of civil penalties

- ☒ **Option 12A** – Increase the maximum civil penalty to $1,100.

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

Option 12A.

In terms of the benefits and risks, these are as per the Options Paper, and our previous submissions.

Imposition and payment of civil penalties

Alternative options for the payment of civil penalties

- ☐ **Option 12B** – Allow owners corporations to impose and retain penalties.
- ☐ **Option 12C** – Retain VCAT's power to impose penalties but allow owners corporations to retain penalties.
- ☒ **Option 12D** – Allow owners corporations to impose penalties but retain the requirement to pay civil penalties to the Victorian Property Fund.

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

Option 12D.

The next best alternative, if Option 12D is not chosen, would be Option 12C.

The options have these salient features regarding the payment of civil penalties:

Option	Imposed by	Retained by
Current law	VCAT	VPF
Option 12B	OC	OC
Option 12C [NSW approach]	VCAT	OC
Option 12D	OC	VPF

As the Options Paper identifies, there are 3 parameters at play to consider here. But they are not of equal weight. Two of them are more important than the third parameter.

Comparing Options 12D & 12C:

Parameter	Option 12D	Option 12C
Minimises time & expense	☑	No
Incentive for OC to pursue	No	☑
Minimises potential abuse of power	☑	☑

Although both of the above options satisfy 2 of the 3 parameters, the parameters in the 2 shaded rows are more important than the parameter in the unshaded row.

The parameter 'incentive for OC to pursue' has the least important weighting, in that the incentive still exists to penalise the offender and to be a deterrent; regardless of who the penalty is retained by.

Following this rationale, Option 12D satisfies the 2 most important parameters, whereas Option 12C [although it also satisfies 2 parameters] only satisfies 1 of the 2 most important parameters by weighting.

Initiating legal proceedings

Alternative options

- ☐ **Option 13A** – Lower the threshold to an ordinary resolution for any legal action.
- ☐ **Option 13B** – Lower the threshold to two-thirds support for any legal action.
- ☒ **Option 13C** – Apply different thresholds for actions in different Courts.

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 13C. For all the reasons outlined in the Options Paper.

This is the most finely tuned option [and without having to introduce a fourth voting threshold that would be a new, additional, type of resolution].

***Important proviso*:**

Defects cases involve significant dollar amounts and need to be excluded from the proposed upper dollar limit [above which would still require a special resolution], in the same way that it is proposed to keep the current exemption for recovering debts from lot owners.

Failing this change to Option 13C, then we would choose Option 13A.

***Insurers*:** as a separate point, third party insurers should be exempt from the need for *any* resolution in order to apply their subrogation rights in accordance with the Insurance Contracts Act.

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?

That is not our preferred option.

Regardless of which option is chosen, or even if the Status Quo was chosen; giving an individual 'standing' should be removed.

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?

Yes.

But that is not our preferred option.

[And do not introduce a fourth voting threshold that would be a new, additional, type of resolution].

Differential regulation of different-sized owners corporations

Alternative options

- ☐ **Option 14A** – Introduce three new tiers of owners corporations.
- ☒ **Option 14B** – Introduce a four tiered system of 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?

Option 14B. For all the reasons outlined in the Options Paper.

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?

Broadly, Yes.

Whilst it is not exactly as we have recommended in previous submissions, the tiers are a big improvement and more appropriate than the current laws.

Building insurance - collectively

A change is desperately needed to the proposed 4 Tiers.

The proposal is that Tiers 1 & 2 have mandatory *collective* building insurance & public liability insurance.

But the proposal is that Tier 3 OCs are not required to have *collective* building insurance [still required to have mandatory public liability insurance]. So, building insurance will still be required for Tier 3 OCs, but instead of OCs having to collectively insure the building, lot owners will be able to individually insure their own lot and their liability for the common property [if collective insurance by the OC is unable to be achieved].

This would be a retrograde step.

We recommend requiring *collective* building insurance for Tier 3.

Given the importance of this issue, **Attachment A** reproduces our response to the Issues Paper on why collective insurance is important and should not have an 'opt-out'.

This is also hard to reconcile because, in the specific section of the Options Paper on Insurance, it says:

"There was little support for allowing lot owners to opt out of mandatory OC insurance and take out their own policies as it would be impossible to monitor whether those policies were actually taken out (and renewed) or were adequate."

Audit requirements

Table 1 has proposed audit requirements that are recommended to be changed, because a mandatory audit/review would be cost prohibitive for smaller OCs. Refinements as follows:

	Options Paper proposal	**Our recommendations**
Tier 1	Mandatory independent audit	Mandatory independent audit
Tier 2	Mandatory independent review	Need an AGM decision *NOT* to have an audit [else audit is required]
Tier 3	No audit or review	Need an AGM decision *WHETHER OR NOT* to have an audit

Inactive

In this section, the Options Paper says that many Tier 3 OCs would be inactive. As the Option Paper notes, fees would have to be collected [eg for public liability insurance] so they cannot be inactive.

Table 1

Note, remember that the Vic OC average lot size is about the level of where Tier 2 & Tier 3 sizes meet.

It should also be noted, as per the details of Table 1- that the criteria set against each tier will need to include the requirement for valuations for insurance purposes.

Also note the 'mandatory building and public liability insurance' details outlined, do not clearly extend to insurance cover for shared services. As this falls under the obligation of section 59 (ie is part of the insurance cover for building reinstatement and replacement), it may unwarily increase the exposure of the OC and lot owners whose properties fall into Tier 3 and 4. That is, where insurance may be taken out by the individuals, it does not clearly obviate the obligation to take out cover for 'shared services', nor clearly create awareness for individual lot owners to seek insurers who will include this cover in their individual/personal policies.

Finances, insurance and maintenance

Defaulting lot owners

Stand-alone options for debt recovery

- ☐ **Option 15A** – Require lot owners to lodge bonds for unpaid fees.
- ☒ **STATUS QUO** – No change

- ☐ **Option 15B** – Permit owners corporations to adopt payment plans in 'hardship' cases.
- ☒ **STATUS QUO** – No change

- ☒ **Option 15C** – Permit owners corporations to recover pre-litigation debt collection costs from lot owners.
- ☒ **Option 15D** – Permit VCAT to make default judgements.

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

That an OC must pursue fee recovery within a maximum period of 2yrs [as per Qld laws].

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

Status Quo – No change.

We are strongly opposed to introducing the concept of fee bonds. Although it probably has the purest of intentions, do not adopt this 'novel' strata concept at all. This is because it will have significant administrative costs, will actually be counterproductive to achieving sound management of OCs, and would not be conducive to proper budgeting for OCs.

If it's chosen to adopt Option 15A regardless of our opposition, then in answer to this question -

Yes, leave it to the OC to set the amount of the fee bond.

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

If it's chosen to adopt Option 15A regardless of our opposition, then in answer to this question –

Yes. As a safeguard.

The maximum amount should be fees of one year [and the bond to be maintained at that level, in the event of any draw-down].

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

If it's chosen to adopt Option 15A regardless of our opposition, then in answer to this question –

OC itself. For all the reasons outlined in the Options Paper.

[ie not the strata manager, nor the RTBA].

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

On balance, OCs should be able to recover costs that exceed the debt.

[They should not be capped at the level of the debt].

Payment plan in 'hardship' cases

There is no question specifically about this, so we make comment about it here.

Status Quo – no change.

OCs can and already do this as needed, with committee approval. Change is not necessary.

Option 15B as it is presented permits OCs to have the power to make a rule. So, given a special resolution is required to make a rule, this is proposing an even higher threshold than currently required.

If it's wanted to specifically address what is possible but currently silent, then it would be best not to make payment plans in 'hardship' cases too difficult to adopt. So instead, make it more similar to the current situation, where the default would be that there's a basic right by either an addition to the Act, or developing a Model Rule. In these cases then, only an ordinary resolution would be required to adopt a payment plan in 'hardship' cases.

Alternative options for litigation costs

- ☐ **Option 15E** – Align VCAT's costs power with those of the Magistrates Court.
- ☒ **Option 15F** – Empower VCAT and courts to award all reasonable costs.

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.

The options have these salient features regarding litigation costs:

Option 15E	Successful party entitled to costs on applicable statutory costs scale. Would still be a shortfall between costs awarded and actual costs incurred.
Option 15F	Successful party entitled to all their reasonable litigation costs.

If Option 15F is not chosen, then it should be mandated that VCAT should be the sole jurisdiction ie cannot be the Magistrates Court.

Insurance

Alternative options

- ☐ **Option 16A** – Increase the level of public liability insurance and correct anomalies concerning plans of subdivision that contain separate buildings.
- ☒ **Option 16B** – Option 16A plus allowing the owners corporations to impose a range of levies relating to insurance issues.

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

The Options Paper notes the premium increase in going from $10m to $20m of cover is 'substantial'.

This is incorrect.

The reality is that the premium increase in going from $10m to $20m of cover is 'miniscule'. The premium increase would be less than $100 per OC. Dividing this by the number of lot owners in the OC, means it's less than $10 per lot owner per year.

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

Option 16B [substantial change] is chosen over Option 16A [minimal change].

The equity achieved by Option 16B outweighs the potential problems because this 'more finely tuned' option provides *significantly* more equity, than the potential downside of a small increase in disputes about its application.

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?

(b) This is the most appropriate option.

Maintenance plans and maintenance funds

Stand-alone options

- ☒ **Option 17A –** Introduce new thresholds for mandatory maintenance plans and funds.
- ☒ **Option 17B –** Require mandatory funding of mandatory maintenance funds.
- ☒ **Option 17C –** Introduce mandatory contingency plans and funds for Tier 1 owners corporations.

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

Both of the stand-alone options [17A, 17B]. For all of the reasons outlined in the Options Paper.

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?

Maintenance plan/fund

The fund amount should be a general obligation [not some fixed proportion of fees].

This is because the appropriate fund level is dependent on what the maintenance plan forecasts is necessary and the proposed timing of works; repairs, replacement or upgrades. It is not relative to the level of annual fees. For example at the time of introduction of this obligation, each building/property will be at a different point in its life cycle, some with new facilities and/or its facilities being maintained adequately, and some in need of immediate attention. Some OCs may already contributing to a maintenance fund, and some may be starting from a nil balance. So as suggested, acquiring a maintenance plan will provide specific details for each OC; its buildings and facilities.

Contingency plan/fund

The fund amount should be a fixed proportion of fees set out in the OC Act [not a general obligation].

This is because of its unplanned nature.

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?

Maintenance plan/fund – general obligation

The resolution as to the amount should be an ordinary resolution [not a special resolution].

Yes, it should be stipulated in the Act that the designated part of the fees must be adequate to fund the plan.

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

Contingency plan/fund – fixed proportion of fees

It is recommended that the OC Act be changed to require owners corporations to establish and pay a contingency fund fee as a mandatory component within the annual budget.

Also that the owners corporation establish and document the rationale for the formula used to establish the level of the contingency fund and that this rationale be considered at the annual general meeting.

Not with standing this process, the contingency fund established:

- Should not be less than 15% of the value of the other components of the annual budget, but may exceed this amount if required.
- An owners corporation could vote to vary the levy downwards once the accumulated balance in the contingency account had reached 150% of the total annual fees of the owners corporation

Increased expenditure arising from lot use

Stand-alone option

- ☒ **Option 18** – Allow owners corporations to recover costs arising from particular uses of lots.

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?

Similarly to the benefit principle law changes [he who benefits more, pays more]. This recognises that the assessment of the benefit principle is not a science. The assessment of relative apportionment of benefit and contribution is, of necessity, a matter of judgement, not science. There will be a range within which it would be reasonable.

Here, similarly to that for the benefit principle, it should not be a precise formula but rather an assessment. Appropriately, the application is then limited in nature. Specific criteria would not actually assist, but as an unintended consequence may confuse the situation.

Part 5 of the Subdivision Act

Common seals

Stand-alone option

- ☒ **Option 19** – Remove the requirement for an owners corporation to have a common seal.

53 What, if any, risks arise from removing the requirement for owners corporations to have and use a common seal?

None.

Stand-alone Option 19 is chosen and is appropriate.

The Options Paper proposes the general situation is to be that, if authorised by the OC, 2 committee members would be able to sign for the OC. This is as opposed to the current law which says it can be any 2 lot owners. It is presumed this is intentional – as a safeguard. But if so, along with other necessary exceptions as per current laws, many OCS are not required to have a committee [whether under current laws or the option proposed] so it will need an exception for this necessary distinction.

Procedure for initial setting of and changes to lot liability and lot entitlement

Initial settings of lot liability and entitlement

Alternative option for initial setting of lot liability and lot entitlement

- ☐ **Option 20A** – Retain the developers' discretion but place a time limit on their application.
- ☐ **Option 20B** – Apply the current criteria for *changes* to lot liability and entitlement to *initial* settings – simple principles.
- ☐ **Option 20C** – Set lot liability and entitlement according to more detailed principles.
- ☒ **Option 20D** – Set lot liability and entitlement according to specified criteria.

Current provisions for changes to lot liability and entitlement

Stand-alone option for changing lot liability

- ☒ **Option 20E** – Improve the current provisions for changes to lot liability and entitlement.

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

As the Options Paper notes, the current unfettered property rights of developers is outweighed by the degree of public interest and underpinning of confidence necessary for the significant strata property sector.

55 If developers' rights should give way to fairness, which of options 20A to 20D for the initial setting of lot liability and entitlement best ensures fairness, and why?

In terms of how much [ie quantum] change is appropriate, we have chosen Option 20D [most change].

If Option 20D is not chosen, the next best alternative is the 'simple principles' of Option 20B [relatively small change or, in the words of the Options Paper: 'relatively simple and logical']

Some salient features of the alternative options are:

Option 20A		After 5-10yrs it's reassessed unless there's a unanimous resolution to affirm the settings
Option 20B	Simple principles	Relatively simple Principles broad, wide discretion
Option 20C	More detailed principles	Qld model
Option 20D	Specified criteria	Minimises discretion, maximises guidance

Note, do not choose the Qld model of Option 20B. Qld, with respect, is not a model to follow for this issue. They have back flipped many times over the last decade or so, from one model, back to the other, and caused havoc in the strata sector.

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)?

It is preferred that it be a licensed surveyor.

However, we understand the thrust of the question – could these options be adopted, except still done by the developer.

Possibly, consider attaching significant compensation from developers that do the wrong thing.

This is what NSW have just done with a separate issue. The new NSW strata law says a developer is liable if they don't set realistic budgets. It provides for compensation from developers who lure unwary buyers with unsustainably low levies. Developers promise fantastically low levies which are a fantasy and deliberately mislead purchasers over the real level of fees.

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

Should be required to set out which specified criteria were applied and the basis for the settings to the fullest extent possible. These details form the basis of 'fairness' for owners corporations expenses amongst lot owners, as well as their voting rights and entitlement to any redistribution of OC funds and/or insurance payouts under particular circumstances. Clearly defined reasons will assist minimise disputes and enable use of these same principles to further amend the plan and subsequent liabilities and entitlements if and when required.

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, but only if immediate action is taken by the strata manager. So additional time to accommodate the new processes would be the preferred option.

SCA (Vic) draws your attention to the extra time, increased procedure and additional services required to lodge forms with Land Victoria. After the time needed to pass all resolutions necessary to implement a change to the plan, including the resolutions required to lodge the form, the strata manager that is to sign the lodgement form, must now take the form to either Australia Post or an Authorised Agent who can Verify their Identity and witness their signature to the form. The form must then be either sent to a lodging agent to submit electronically or physically taken to the Titles Office in Melbourne for lodgement. Land Victoria is no longer accepting forms via post.

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?

Stand-alone Option 20E provides an exception for when one lot owner owns ≥ half of total lot entitlements.

The proposal sufficiently balances these rights.

Especially given that this is just to pass the threshold for being able to hear a matter. VCAT would consider all relevant case specifics in actually determining the matter.

Sale and redevelopment of apartment buildings

Alternative options

- ☒ **Option 21A** – Reduce the threshold to 75 per cent for all owners corporations - New South Wales model.
- ☐ **Option 21B** – Reduce the threshold to 75 per cent for all owners corporations - less restrictive model.
- ☐ **Option 21C** – Adopt a tiered approach to the threshold according to building age - Northern Territory four-tiered model.
- ☐ **Option 21D** – Adopt a tiered approach to the threshold according to building age - simpler three-tiered model.
- ☐ **Option 21E** – Reduce threshold to 75 per cent for commercial buildings only.

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 21A.

Option 21A is the best and also to harmonise laws.

There's already too much divergence in state and territory strata laws. Jurisdictions should harmonise strata laws wherever possible. Considering the issue of termination is a brand new consideration for Vic, harmonise on this common approach.

Given termination is a significant issue, there is one change recommended to Option 21A, also bearing in mind the relativities of the sorts of other decisions that require a unanimous resolution or a special resolution. So, for termination, the one change recommended is NOT to provide for an interim special resolution. That is, just for termination, it has to be a 'normal' special resolution.

The salient features of the options are:

Option 21A	75% - NSW model	Mandatory VCAT supervision
Option 21B	75% - Less restrictive model	Only 1 special resolution Non-mandatory VCAT supervision [burden of proof on those wanting to demolish]
Option 21C	Tiered by age – NT 4 tiered model	More conservative thresholds Non-mandatory VCAT supervision [burden of proof on dissenting lot owner]
Option 21D	Tiered by age – simpler 3 tiered model	Reduced thresholds c/w Option 21C Mix of mandatory [Tier 1] & non-mandatory [Tier 2] VCAT supervision
Option 21E	75% - but only for commercial	

A safeguard such as mandatory VCAT supervision is appropriate.

Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots].

The more conservative thresholds of Option 21C are still too conservative ie they are still too high.

To only deal with commercial buildings, as per Option 21E, is inadequate. Wholly commercial OCs are a miniscule portion of the building stock.

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

The voting thresholds listed in Option 21D are preferable and the most appropriate.

In terms of the VCAT processes, the decision should be the same as current laws. Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots].

Make both Tier 1 and Tier 2 to be mandatory VCAT supervision [with burden of proof on dissenting lot owner(s)].

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

Option 21E-1.

For the same reasons as why Option 21A is better than Option 21B.

That is:

- Mandatory VCAT supervision is appropriate
- Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots]

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?

Yes, it should be 75% lot entitlement only. Do not add a new, second definition of a special resolution [ie lot entitlement *AND* number of lots].

Yes, the burden of proof should be on the applicant [ie dissenting lot owner], not on the respondent [ie those wanting to demolish]. This is counterbalanced by reversing the non-mandatory VCAT supervision, to instead be mandatory VCAT supervision.

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

All the options are an improvement on the current laws; and are balanced with safeguards.

For the reasons we have provided in these questions, in terms of ranking our preferences:

Option 21A is our first chosen preference.

Option 21D is our second chosen preference.

The last, or fifth chosen preference, is Option 21E.

Retirement villages with owners corporations

Alternatives for reform

- ☐ **Option 22A** – Require separate committees for owners corporations and retirement village residents.
- ☒ **Option 22B** – Require separate committees and annual general meetings for owners corporations and retirement village residents.

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?

Option 22B. For all the reasons outlined in the Options Paper.

It is as proposed in the 2014 Bill, which we supported.

The convenience of combined AGMs is outweighed by the confusion caused and the differing processes and voting entitlements of the two Acts. [They can still be held consecutively, so the proposed change is not too onerous].

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?

It is not our chosen option, but if Option 22A, then the best sub-alternative listed is:

The second one [ie operator decides whether to hold joint/separate meetings].

Do not choose the first one [ie different voting entitlements for resolutions under each Act]. Perversely, this one may add *more* confusion than currently exists.

Attachment A – Building insurance 'opt out' – response to Issues Paper

25 Should lot owners be able to 'opt out' of the insurance policy taken out by the owners corporation when they take out their own insurance (and not, therefore, pay their portion of the owners corporation's policy)?

No.
The SCA (Vic) Policy Position addressing the insurance 'opt out' issue is reproduced below.

Building insurance
All owners corporations must take out full reinstatement and replacement insurance for all buildings denoted on the plan.
Sometimes lot owners either want to or do individually take out insurance for their lot(s) rather than as part of the collective entity of the owners corporation.
This creates problems. Some of the disadvantages of individual insurance option are:

- Individuals may not renew the policy, leaving all owners of the owners corporation exposed to unlimited liabilities.
- A person buying into the Owners Corporation may decide not to take out insurance, again exposing the OC and members to unlimited liabilities
- Individuals may inadvertently or deliberately "under insure" their individual property, exposing themselves and the owners corporation to financial exposure in the event of a claim. This exposure is increased in large and total losses.
- Specialist Owners Corporation insurance policies do not have average clauses as a condition of the policy. This is a major consumer benefit.
- As has been seen in previous large catastrophic weather/bush fire events, there is unfortunately a too high percentage of individuals who did not have insurance or had under insurance. This causes tremendous emotional and financial stress at time of most need and may lead to increased Government costs in providing financial support.
- The policies purport to cover [that owner's share of] the common property but the risk is that insurers not well versed in owners corporations may not have policies that adequately insure what must be insured.
- It is more expensive than the owners corporation taking out the collective insurance. In one example of a Master Planned Estate which SCA (Vic) is aware of, the saving to each lot owner was greater than 50%.
- In the event of a claim, there will be to and fro between insurers over who is responsible, and who should pay in the event of a successful claim.
- In many insurance claims situations, time is of the essence and there is no luxury to procrastinate particularly on "make safe" issues.
- Many OC's who share party walls experience problems with the co-ordination of repairs/reinstatement being managed by separate insurers and repairers.
- There may be a significant reluctance for insurers to offer policies for the other mandatory and optional insurance it is sensible or a legal necessity for an Owners Corporation to have (liability, office bearers, fidelity guarantee etc) without having the building included as part of the package. If it is available it is likely to be more expensive than buying as a part of a package.

SCA (Vic) recommends the owners corporation be identified as the entity required to take out insurance [not individuals].
SCA (Vic) recommends the introduction of this obligation be complemented by administrative guidelines for staged subdivisions, greenfield master planned estates and the like.

SCA (Vic) recognises the administrative concerns experienced by an owners corporation of greenfield master planned estates, large scale subdivisions and the like, due to their staged nature.

An OC is not always informed immediately if at all, of the progressive completion of lots and/or stages which may expose the OC to unnecessary risk of insufficient cover. By introducing mandatory administrative procedures for the individual lot owners, developers and owners corporations, essential information should be available to ensure adequate insurance is in place at any given point in time.