

14 November 2019

Ms Anna Cronin
Commissioner for Better Regulation and Red Tape
Level 37, 2 Lonsdale Street
MELBOURNE 3000

Dear Ms Cronin,

REVIEW INTO VICTORIA'S BUILDING AND PLANNING APPROVALS PROCESSES AND EARLY BUILDING WORKS INFRASTRUCTURE

Strata Community Australia (Vic) Ltd welcomes the opportunity to make a submission as the peak body for the Owners Corporations sector, which comprises residential properties ranging from 2 units in a suburban street to many hundreds of units in inner city apartment buildings. Owners Corporations represent property valued at over \$300 billion dollars and encompass commercial, retail, lifestyle resorts, retirement villages, car parks, storage facilities, industrial and, increasingly, mixed developments. More than \$1 billion per year is collected and spent.

There are currently over 85,000 active owners corporations in Victoria, covering more than 772,000 individual lots. It is estimated that around 1.5 million Victorians—a quarter of the state's population—either live in, or own property in, an owners corporation.¹

This submission relates to D2 (Improve access to building records) and D6 (Distinguish building consultants from building surveyors) and we set out opportunities for improvement. We also highlight the personal and financial cost of defects suffered by Lot Owners and occupiers as a result of building system failures, along with the challenges faced by Owners Corporation Managers.

We thank Bronwyn Weir for reviewing and editing *The Australian Building Manual Guideline (attached)* which has been developed in partnership with WebFM Pty Ltd, Engineers Australia and Strata Community Association Ltd.

BACKGROUND – STRATA COMMUNITY AUSTRALIA (Vic) LTD

SCA Victoria was established in 1990, it succeeds Owners Corporations Victoria (OCV) and Institute of Body Corporate Managers Victoria (IBCMV).

SCA (Vic) members comprise more than 80% of all professional owners corporation managers, with over 700 members managing upwards of 450,000 lots. SCA (Vic) Associate members are industry suppliers, including Essential Safety Measures managers, quantity surveyors, insurers, lawyers, accountants, facility managers, property valuers, building maintenance and tradespeople.

Members benefit from representation, support, advice and promotion. With Continuing Professional Development (CPD), Best Practice Guidelines on regulatory and legislative amendments, updates on VCAT determinations and emerging issues, SCA members are best placed to manage OCs and empower Lot Owners and occupiers. The Code of Professional Conduct raises the bar to maintain ethical standards and members are held accountable for poor practice.

¹ Second Reading OWNERS CORPORATIONS AND OTHER ACTS AMENDMENT BILL 2019 (11 September 2019)

Owners Corporation Lot Owners benefit from free SCA introductory courses on the strata community sector and through subsidised committee training on roles, rights and responsibilities. A new Lot Owners membership category is being established.

A robust SCA (Vic) complaints process formalises investigation, mediation and processes for dispute resolution between Owners Corporations and their SCA member managers; and also on professional conduct issues between SCA members with a focus on sanctions, disciplinary action and mentoring.

In Victoria, the Owners Corporations Act 2006 defines an Owners Corporation as a *'body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or cluster subdivision.'* The individual Lot Owners form a collective known as an Owners Corporation. This is a legal entity which must comply with its governing legislation and enabled regulations.

Owners Corporations can choose to appoint a registered manager who will act on their direction, including engaging contractors for maintenance and repairs, on behalf of the OC. The responsibility to maintain common property and shared services is that of the owners corporation. The manager assists the OC to meet these and other obligations. As part of the Annual General Meeting, Lot Owners collectively agree on a budget to fund ongoing maintenance and shared service costs. Items agreed can include the management fee, caretaking costs including gardening, utility charges, repairs to essential services and insurance premiums. These are funded through fees/levies.

Only Lot owners have a vote and that vote can be exercised as one vote one value, or, in Victoria, can be based on the Lot Entitlement which may include carpark and storage spaces. Legislation does not permit tenants and other residents to be members of the Owners Corporation or to vote.

A Registered Manager is defined and dealt with in Part 6 of the Owners Corporations Act 2006 (Victoria), which sets out the appointment and removal of a manager, functions of manager where there is a committee, or no committee, the duties of a manager and other matters, including provision for a manager to return records within 28 days of termination of appointment by the Owners Corporation.

To put the Owners Corporation sector in context:

Size of owners corporations in Victoria

Number of lots in the owners corporations	Percentage of owners corporations in Victoria
0 – 2 lots	75.33%
3 – 9 lots	15.32%
10 – 49 lots	8.31%
50 – 99 lots	0.58%
100 or more lots	0.46%

Source: Consumer Property Acts Review Issues Paper No. 2 Owners corporations

1. SCA (Vic) seeks to highlight the impact of building defects, non-compliant and not-fit-for-purpose products and materials on the Owners Corporations Sector from a consumer and community perspective.

According to the June 2019 report “An Examination of Building Defects in Residential Multi-owned Properties”² the most common defects are water ingress, internal and external wall cracking, roofing and guttering problems and tiling faults. These are mainly the result of poor workmanship. SCA (Vic) welcomes the *Building Amendment (Registration of Building Trades and Other Matters) Act 2018* enabling the introduction of registration and licensing for, at a minimum, **carpenters, bricklayers, water-proofers, plasterers, and footing and slab workers**. This will improve training and therefore competency.

While the consumer rightly expects that builders carry out construction works with reasonable skill and care, the reality is that inadequate building code regulation and certification has led to systemic failure.

There will always be some building industry operatives who seek out and take advantage of legislative and regulatory loopholes – you can’t regulate against greed and dishonesty. However, lack of consequences and sanctions has increased this cohort, who see fines and settlements as the cost of doing business. Worse is the “phoenixed” builder who has avoided any liability for rectification. **Strata Community Association Australasia Ltd** welcomes the recent reintroduction of the Federal Government’s *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019*.

Strata Community Australia (Vic) Ltd welcomes the Victorian Government’s *Building Amendment (Cladding Rectification) Bill 2019* and *Building and Environment Protection Legislation Amendment Bill 2019*. The legislation and enabled regulations will strengthen the powers of regulators to investigate and take action against illegal phoenix activity, so “The VBA will be able to refuse applications for new registration, or renewal of registration, if the applicant is suspected to have engaged in illegal phoenix activity at any time over the previous two years” and provide greater scrutiny of “company directors, secretaries and influential persons as part of the registration process.” Importantly, the legislation “expands existing suspension powers for building practitioners responsible for unsafe works to ensure that plumbers and architects can also face immediate suspension. This power was introduced for building practitioners in 2018 and has already been used by the VBA.”³ This recognises the extent of the aforementioned water and wall cracking related defects.

The previously referenced *Building Amendment (Registration of Building Trades and Other Matters) Act 2018* also banned high risk external wall cladding products; facilitated the VBA to act as the relevant Building Surveyor and established the *Cladding Rectification Agreement (CRA)* scheme, a three-way voluntary agreement between an owner or owners corporation, lender and council to fund cladding rectification works, with loan repayments made over time through the council rates system.

Once again, the Lot Owner, already the broken part of the building chain, potentially smashed financially, was told that there was no consumer protection, as they were ordered to rectify dangerous cladding on a building they purchased in good faith. To date, no CRAs have been entered.

Owners and occupants of all strata properties have a right and need to know the dangers in their built environment. Strata Owners Corporation Managers act on behalf of the Lot Owners to maintain and repair assets of the Owners Corporation on “Common property” which includes “any parts of the land, buildings and airspace that are not lots on the plan of subdivision. It may include gardens, passages, walls, pathways, driveways, stairs, lifts, foyers and fences.”⁴

² Nicole Johnston (Deakin University) and Sasha Reid (Griffith University) 2.3.2 Page 10

³ <https://www.premier.vic.gov.au/stronger-powers-for-building-regulator-under-new-law/> 29/10/19

⁴ <https://www.consumer.vic.gov.au/housing/owners-corporations/definitions>

Owners corporation levies pay for maintenance of Essential Safety Measures (ESM) in common areas such as fire systems. As a result of defects, urgent repairs including wiring, water leaks and mould lead to unbudgeted expenses and/or insurance excess and legal costs. With this increased financial pressure, some Lot Owners are not paying Owners Corporation levies. Investors and owner occupiers affected are struggling to meet mortgage commitments for properties worth significantly less than what they paid for them. Cladding is the tip of the iceberg.

According to Consumer Action Law Centre's "Who is Making Australians Bankrupt?" report released in August, 12% of creditors issuing petitions for bankruptcy relate to strata property levies.⁵

While a legislative line has been drawn in the sand to improve building regulation going forward, for Lot Owners and occupiers there is no mitigation for personal anguish and financial loss resulting from systemic regulatory failure.

2. SCA (Vic) seeks to highlight the impact that inaccessible, poor quality and incomplete building records, including fixtures, fittings and appliances, has on the Owners Corporations Sector from a consumer and community perspective.

The time for blame, finger pointing and criticism about the calamities in the built environment have passed. The missing link in the building chain is the end user – the owners and occupiers of defect-ridden buildings whose lives have been turned upside down by unsafe, non-compliant and not-fit-for-purpose building products.

We acknowledge the Building Ministers' Forum commitment to address the crisis in building confidence with the commissioning of independent experts, Professor Peter Shergold AC and Ms Bronwyn Weir, "to undertake an external assessment of the compliance and enforcement systems for the building and construction industry across Australia and the potential for further or additional reforms."⁶

D2. Improve access to building records

As acknowledged in this review discussion paper, Recommendation 20 of the Shergold Weir "Building Confidence Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia"⁷ report relates to building documentation being produced and held inconsistently, usually incomplete, ad hoc and in hard copy.

The focus now needs to expand to the end user of the building information– consumers in the built environment being strata Lot Owners. To ensure buildings and assets are maintained as required and Essential Safety Measures are compliant, building input information needs to form a 'living' document, recording product recalls, replacements and rectification works for equipment and systems on an ongoing basis.

Strata managers procure routine maintenance and other works at the direction of and on behalf of Lot Owners. Currently, building product and user manuals can be non-existent, incomplete or difficult to access. This makes organising and contracting works inefficient, time consuming and more costly.

⁵ <https://consumeraction.org.au/20190813-forced-bankruptcy-report/>

⁶ <https://apo.org.au/sites/default/files/resource-files/2018/05/apo-nid171286-1075611.pdf>

⁷ https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf

The Strata Community Association seeks to ensure that all building documentation from permit stage and soil testing, to application for an Occupancy Permit, includes a register of all:

- building materials, plans, modifications, substitutions
- products used
- appliances, fixtures and fittings; and
- equipment and system manufacturer and warranty information.

This should be prescribed to ensure it is consistently prepared and required to be handed over by law from the developer (initial owner) to the new owners (Owners Corporation) prior to an Occupancy Permit (for a new building) or Certificate of Final Inspection (for a renovation) on completion of work, being approved.

The Relevant Building Surveyor would sign off on the documentation, which provides a final audit in the building process. The new owners and or/their representatives would accept the *Building Manual* and consent to the Occupancy Certificate. Policies would be established about unreasonable withholding of consent.

Strata Community Australia (Ltd) agrees in principle with the *Proposed improvement* in clause 85 of the discussion paper, that:

A central database for Victoria that is managed by the VBA is the intention of the Victorian Government. In the longer term, the Building Activity Management System (BAMS) platform, recently introduced by the VBA to manage building permit numbers, is intended to provide a central building records database.

Once the needed software and infrastructure are in place through BAMS, councils could be assisted to migrate existing digitised records to BAMS and digitise and lodge remaining hard copy building information.

The intention of the BAMS system is that building surveyors would lodge records electronically direct to BAMS and would have unlimited access to records held in BAMS to support them to perform their building permit and enforcement functions. Councils would use the access they have through BAMS to records in their jurisdictions to respond to public requests for access to records.

From a policy and practical perspective, we flag a few concerns with regard to data storage:

- Who pays for hosting the data
- Who gets access to the data
- What form is the data in
- Who manages access/authorisation/limits/removal
- Who provides the data and when
- What QA system is in place to ensure its accurate

Hosting a large number of files (a \$1b project = 100,000+ documents) is not a solution, it's a problem.

The creation of the data is from a very large pool of providers, designers (could be 10-100), sub-contractors (say 50-200), plus client based teams. You could have up to 200+ users on a single project covering supply of data, checking of data and acceptance of the data. Provision of files is only part of the process, provision of asset schedules, maintenance tasks, meta data to suit client systems is a major issue (how do they use it in their systems if it's not matched) and requires in depth consideration and modelling for future needs.

We recommend that the central building records database be extended to include fixtures, fittings and appliances to track faulty product identification and location, subsequent replacements and assist with recalls. This will ensure all Lot Owners and occupiers as well as Owners Corporation Managers have access to relevant information for their built environment. The *Manual Guideline* also contains a User Sub manual for all equipment and systems.

SCA Australia Ltd and *The Australian Building Manual Guideline* partners seek to pilot a Demonstration Project with the Victorian Building Authority. As part of the project, we would include a review of ESM plans, make recommendations for immediate and ongoing maintenance and test responses in case of emergency. We seek to include occupant warning systems and communication of mitigation strategies as part of the pilot.

SCA (Vic) has submitted a proposal to CAV regarding the establishment of a Building Owner and Occupant Register. This will assist police and emergency services, Owners Corporations Managers, the VBA, Local Government, VCAT and other authorities in contacting residents, as well as absentee owners and short-stay users. A register would alert authorities to change of use, with penalties for non-compliance. This is relevant to DELWP and VBA to ensure occupants can be advised in a timely and effective manner about all risks and issues with essential services, such as gas and water problems which have immediate effect, as well as building structural and material defects. This Register will also assist with recalls of appliances and faulty products.

Part D – The Building Approvals Phase

Distinguish building ‘consultants’ from building surveyors.

Strata Community Australia (Vic) agrees that consumers lack awareness about the statutory role of Building Surveyors compared to the work undertaken by a building consultant.

SCA (Vic) looks to partner with CAV to devise and distribute materials to Lot Owners to communicate these different roles. Owners Corporations Managers would benefit and can empower consumers in Owners Corporations.

We also point out the confusion between Registered Owners Corporations Managers and unregulated Building Managers and seek to partner with CAV to educate consumers about the regulated roles and responsibilities of strata managers, along with benefits of professional management to ensure compliance with the Owners Corporations Act and other relevant legislation and regulation.

Conclusion


Strata Community Australia (Vic) appreciates the opportunity to bring its issues and concerns to this review. We thank the Commissioner and the Advisory Board, Bill Kuszniarczyk, Kate Roffey and Radley de Silva, for their consideration of the SCA Australia Ltd, Engineers Australia and WebFM document, *The Australian Building Manual Guideline*.

Should you require any further information or seek clarification, please do not hesitate to contact me.

Yours sincerely,



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