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PARLIAMENTARY BRIEFING

OWNERS CORPORATIONS AND OTHER ACTS AMENDMENT BILL 2019

SCA Victoria is the peak association for the owners corporation sector. Established in 1990, it succeeds Owners Corporations Victoria (OCV) and Institute of Body Corporate Managers Victoria(IBCMV)

SCA (Vic) represents more than 80% of all professional owners corporation managers, with over 700 members managing upwards of 450,000 lots. It also represents 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.

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.

As a result of the exponential rise in strata living due to lifestyle choices and population growth, 1 in 4 Victorians are living in or affected by owners corporations. These comprise 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.

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 meet these and other obligations. As part of the Annual General Meeting, Lot Owners collectively agree on a budget to the 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, that 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:

Clause 5 - new tiers

Table 1: Size of owners corporations in Victoria –

Number of lots in the owners corporations	Percentage of owners corporations in Victoria
0 –2 lots	75.33% TIER 5*
3 – 9 lots	15.32% TIER 4*
10 – 49 lots	8.31% TIER 3*
50 – 99 lots	0.58% TIER 2*
100 or more lots	0.46% TIER 1*

Source: Consumer Property Acts Review Issues Paper No. 2 Owners corporations
*tiers added/amended by SCA (Vic)

SCA (Vic) notes that it submitted concerns relating to the following matters and these have been accepted and withdrawn from the Bill before the House. We thank the Minister for listening and acting to avoid:

1. Increased risk exposure to individual lot owners and their owners corporations, who may remain ignorant to the risks when not required to collectively insure.

2. Increased disputes as a result of the definition of 'occupiable lots' and unfair application of its use in determining quorums, proxies and powers of attorney that may be held.
3. Higher risk of non-compliance as a result of failure to comprehend the over complicated tier system.

URGENT ISSUES WITH THE BILL

As submitted to the review, SCA (Vic) again flags these urgent issues and seeks amendments to the Bill before the House:

1. Excessive compliance costs to businesses and significant financial burden on owners corporations to comply with the preparation of financial statements in accordance with Australian Accounting Standards.
2. Limiting the number of proxies for all tiers of owners corporations will significantly impede an owners corporations ability to achieve a quorum, make decisions and unfairly limits the number of proxies that can be held by a single person. This proposed limitation is a restriction on a person's fundamental right.
3. Failure to introduce minimum professional standards of education and training, including ongoing compulsory professional development (CPD) and a pathway through accreditation to a registration regime. At the same time, this government has brought in Registration of Trades which *"aim to deliver greater individual accountability for non-compliant building work, confidence that tradespersons have adequate qualifications, skills and experience, incentives to improve individual skills and training in the building industry (including completion of apprenticeships); and a reduction in the incidence of non-compliant building work."*[1] This change acknowledges the increased risks in the built environment and seeks to address building defects. SCA (Vic) believes higher registration requirements will acknowledge the increased complexity and legal risks in the OC environment.

   The Strata Community Association seeks to raise the bar, improve standards and accountability; and aims to have industry participants who are professional, well qualified and up to date on regulatory changes to ensure compliance. Owners Corporations Managers are the custodians for Lot Owners - they manage $300 billion dollars of their assets. This Bill and its enabled regulations add to the complexity and importantly, liability, for Managers who act on behalf of the Lot Owners who appoint them. Poor practice has impacts on Professional Indemnity insurance premiums and acts as a barrier to recruitment.

[1] https://www.vba.vic.gov.au/news/news/2019/victorian-government-to-release-list-of-trades-prioritised-for-registration-in-october

CONCERNS WITH AFOREMETIONED URGENT ISSUES

1. ACCOUNTING STANDARDS

Excessive compliance costs to businesses and significant financial burden on owners corporations to comply with the preparation of financial statements in accordance with Australian Accounting Standards.

Clause 17 of the Bill amending Section 34 of the OC Act – Financial Statements

Requiring annual financial statements to be prepared in accordance with the Australian Accounting Standards will place significant and additional financial burdens on OC Management firms, and ultimately the lot owners within owners corporations themselves.

SCA (Vic) has previously provided its Accounting Practice Guidelines and Reporting Standards to CAV and the Minister.

SCA (Vic) urges CAV recognise the expertise of our members and work with the peak body to add value and relevance. Development of any accounting regulation will significantly impact the sector we represent. SCA already supports the sector with established and respected best practice standards. Any move to adopt a different standard should only be undertaken after in-depth consultation and in agreement with the peak body for professional OC managers. We urge CAV set up a reference committee and/or approach the Accounting Standards Board to establish an Australian Accounting Standard for OC's, with SCA (Vic) having a seat at that table.

This new section introduces the obligation for tiers 1 & 2 to prepare their financial statements in accordance with Australian Accounting Standards [AAS].

These changes were previously proposed within the Regulatory Impact Statement to the review of the original 2007 OC Regulations, not were NOT introduced, to CAV's credit, within the OC Regulations 2018.

We reiterate our previously expressed concern together with CAV's response and own statement of reasons below:

> *"CAV notes stakeholder concerns regarding the proposed introduction of the AAS as the prescribed standard for the preparation of annual financial statements. Whilst the objective of improving the financial management of owners corporations over time is important, CAV accepts that introduction of this measure with a short lead-in period is likely to impose additional compliance costs. As such, proposed regulation 7 has been removed. CAV will continue to consult with stakeholders to determine how best to improve the financial management of owners corporations. Reasoning presented by SCA (Vic) included highlighting the implications for professional managers to comply with the new financial management standards being introduced. It is understood the purpose of introducing these standards is simply to define the 'auditing' requirements and upon close review revealed the following.* ***Requiring annual financial statements to be prepared in accordance with the Australian Accounting Standards, would place a significant financial burden on owners corporations."***

This is because the majority of owners corporations do not currently have their financial statements prepared by a professional accountant, and would therefore not be familiar with the requirements of the AAS. Other

stakeholders also argued that current industry practice for many owners corporations differs from that prescribed under the AAS, particularly in relation to the treatment of capital items.

SCA (Vic) anticipates this reform will be disastrous. It will introduce significant complications and issues, without achieving the desired policy outcome of improved governance. The Bill appears to require non-accountants to comply with accounting standards. The full impact of such requirements is not fully known. SCA is concerned this will be burdensome and fears unintended consequences that outweigh any benefits to the OCs.

Currently there are no prescribed standards for owners corporations to meet. As the peak body, SCA has long established its own Accounting Practice Guidelines and Reporting Standards last updated in 2016.

We urge the Minister to maintain the status quo, Clause 34(1) should delete the requirement that annual financial statements must be prepared in accordance with AAS.

The changes will require at a minimum, upgrades of accounting programs. New programs/software will need to be developed just to meet this requirement, be tested and sold to the market by providers who are willing to invest in it and then be purchased at significant cost to OC businesses and accounting firms. Additional qualified accounting staff will need to be employed by OC management firms to comply.

In practice, the price of services offered to the consumer will in turn have to allow for these added business expenses and be passed on to lot owners and to tenants.

It is also stressed that while the changes only require tier 1 and 2 OCs to comply with producing financial statements to the AAS, ultimately the new software will be used to deliver a service to all OCs to avoid duplicate systems. This may impose unnecessary additional expenses on tier 3 and 4 OCs who choose to be managed professionally.

We reiterate that an OC is a very different creature to other types of entities such as companies, incorporated associations, etc. who are governed by the Corporations Act.

For example: *Assets – treat as an expense*
AAS requires assets purchased to be reported as Assets in the balance sheet and then depreciated over the life of the asset. Such a treatment is not appropriate for an owners corporation.

The OC must account to its members for its income and all expenditure, regardless of whether the expense is capital by nature. If an OC pays $10,000 to purchase furniture and equipment for an on-site building manager, that money has gone and is no longer available for lot owners to spend.

An OCs accounting has traditionally expended the entire amount in the year of acquisition, but this is regularly queried by auditors. For this reason, it has been included in the aforementioned SCA (Vic) Accounting Practice Guideline that gives recommendations as to accounting treatment:
"All expenditure, even capital expenditure, is to be reported in the income and expenditure statement. Assets should not be depreciated over time but reported in the year of purchase."

The negative impacts resulting from the application of AAS to OCs cannot be overstated.

- It will actually reduce owners' understanding of financials presented; and
- It will significantly increase costs to owners going forward.

The cost of an OC audit/review under the AAS regime will also increase significantly.

Another complication is capital expenditure on improvements. For example, an OC may add a security gate and fence to the property, using OC funds, or even a special levy. This is capital expenditure (building improvement). Should it be capitalised? The fence forms part of common property so belongs to all owners as tenants in common, it is not an asset of the OC, despite OC funds being applied. This would be a nightmare for auditors and inexperienced managers.

There is another reason why this change is not necessary. Maintenance plans/funds will now be required for tier 1 OCs and optional for tier 2,3,4, and 5. This provides OCs with a de-facto form of positive asset depreciation by way of maintenance funds. For example, new carpet is installed throughout the building. A company or incorporated association would treat that as an asset and depreciate it over the life of the carpet (say 10 years). An OC would have identified that the carpet will last 10 years so saves 1/10th of its cost each year and pays for new carpet as an expense in the maintenance fund.

SCA (Vic) strongly urges the Parliament to reconsider the introduction of this additional requirement - with current known disadvantages outweighing the benefits of any unclear audit process that may be performed.

If, at all, requirements are to be set, it could be similar to those prescribed for owners corporations certificates (under s151 of the OC Act and within the OC Regulations). Basics could be established as a starting point and provide elements against which audits can be conducted. The SCA (Vic) industry Practice Guideline aims for a better understanding and is to support determination of relevant prescriptive requirements.

The position of SCA (Vic) is consistent with the most recent submission of Kelly + Partners Chartered Accountants; as submitted to Bill Exposure Draft 10th May, 2019.

2. PROXY FARMING and PROXY CROP SHARING

Limiting the number of proxies for all tiers of owners corporations will significantly impede an owners corporation's ability to achieve a quorum, make decisions and unfairly limit the number of proxies that can be held by a single person. This proposed limitation is a restriction on a person's fundamental right.

Clause 42 – introducing section 89 (D)

Section 89 in the current Act has worked well and in SCAs view affords sufficient protection. Indeed, not one matter relating to proxy farming has been taken to VCAT in 13 years.

Limitations on the right of a lot owner to appoint a proxy is a limitation on their fundamental right. According to ss 72(f) & 76(2)(d), this pertains to annual and special general meetings.

In the experience of the majority of SCA (Vic) professional strata manager members, managing 450,000 lots, proxy farming is minimal. The proposed legislative change will have significant and adverse impacts on decision making in owners corporations; particularly tier 3-5 OCs which represent 98.96% of OC developments in Victoria.

The well-known apathy of lot owners in many OCs results in high non-attendance at AGMs and general meetings. Lot owners may currently submit a proxy appointing their chairperson and/or strata manager to cast votes on their behalf. **If either of these nominated representatives receive more than the number of proxies under the new regime in this Bill, how does that person (chairperson/manager) determine which lot has the right to cast their vote? This proposed change would deem all other votes invalid.**

Limiting the ability of lot owners to appoint a trusted chairperson or manager to cast their vote will make it more difficult to achieve a quorum for a meeting and to pass resolutions which are often urgent in nature.

The OC Act currently prohibits a person from requiring or demanding that a lot owner give another person a proxy or power of attorney for the purpose of voting at a meeting or in a ballot of the owners corporation. Instead of this amendment, CAV may be better placed to investigate the very small number of complaints it receives and take action where proxies are being misused. Enabled regulations could enforce penalties that may be imposed under the existing provisions of the OC Act.

Perversely, those that want to 'game' the system will continue to do so even 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.

Despite the good intentions of the proposed legislative amendment, restricting proxies will have unintended consequences and become counterproductive.
If CAV introduces any such limitations it may be more relevant to consider its application to the Tier 1 OCs only and/or meetings at which the initial owner (builder/developer) may still be a member of the OC. As stated, proxy 'farming' is not an issue significantly impacting the vast majority of OCs in Victoria and there is no material problem to solve. Restricting it would be a solution in search of a problem and result in unintended consequences.

A more efficient management process for absentee voting and deterring misrepresentation of a persons voting rights, may be to mandate the use of voting papers. In such instances the lot owner can simply complete, sign and return the voting paper to ensure their vote is counted towards the outcome they wish to achieve. The voting paper should include all known resolutions to be put to the meeting alongside a selection to vote for / against or abstain from the vote. Use of a voting paper will enable each lot owner to engage more directly and cast a meaningful vote. A voting paper will also reduce ambiguity of interpretation of a person's direction to vote (if acting as a proxy) and lead to better decision making and accountability of lot owners.

Legislation should also be updated to recognise online voting platforms which currently exist and are operational nationwide, which allow real time recording of votes cast. This also reduces costs on OCs.
SCA (Vic) notes that under the current legislation directed proxies are permissible. However, is not understood why proxies are invalid to appoint a manager.

3. REGISTRATION OF OC MANAGERS - MINIMUM QUALIFICATIONS
COMPULSORY PROFESSIONAL DEVELOPMENT

Failure to introduce minimum professional standards of education and training, ongoing compulsory professional development (CPD), and a pathway through accreditation to a registration regime.

Clause 74 of the Bill amending Section 179 Consideration should be given to the OC Act Eligibility for registration and inclusion of minimum level qualifications.

SCA (Vic) urges the Minister and CAV to introduce compulsory CPD and Accreditation through it, the peak industry body. We propose the staged introduction of Certificate IV as a minimum qualification and ongoing training as a pathway to registration. Current registered Owners Corporations Managers would be 'grandfathered'; and the courses would be developed with RTOs and TAFEs by SCA (Vic) to reflect current industry practices and obligations.

We only have to look at current and foreshadowed, emerging and impending financial and structural disasters as a result of failing regulation in the building industry (i.e. flammable cladding & defects) and its impact on the safety and security of residents and lot owners in OCs and on everyone in the built environment.

Currently, Strata Community Association (Vic) is partnered with RMIT to deliver the Certificate IV in Strata Community Management. SCA (Vic) is committed to providing; and delivers; training and industry qualification courses to its members, to ensure OC/ strata managers are equipped with up to date knowledge of their ever-increasing liabilities and responsibilities as agents of their owners corporations.

We call on the Minister to introduce a set of minimum qualifications and utilise SCA (Vic) accreditation as a pathway to the aforementioned registration regime and a Diploma level qualification for the Director [or nominee] of the OC business. A Certificate IV for practising Strata Managers should be the minimum qualification. SCA delivers introductory training nationally through its A100 here and will provide continue to develop and deliver Victorian relevant training.

We also understand that the Australian Industry and Skills Committee recently endorsed a new CPP Property Services Training Package (package 8) which contains a new qualification called the Diploma of Property (Agency Management). CAV has since confirmed the units of competency within this qualification are being reviewed and updated. Upon reference to the course descriptors, it is evident that this Diploma is being developed to meet the Regulators requirements for the licensing/registration purposes of both real estate and strata management businesses.

SCA (Vic) is concerned this provides an unfair advantage to Real Estate Agents who also offer strata management services; i.e. marketing to the consumer that they are a 'one stop shop' when in fact they have never undertaken any training or education. This favours a significant minority of members who operate as real estate agencies as well as strata management businesses, and a wider, more significant number of real estate companies (i.e. non SCA members), who offer strata management industry wide. We believe this is confusing to the consumer, it also shows bias towards estate agents and we consider this to be anti-

competitive. A full Registration regime offers protections to the consumer as all OC/Strata Managers will be required to meet minimum education and ongoing training (CPD) standards. We suggest as a starting point, CAV may wish to consider the WA *Strata Titles Amendment Act 2018* which imposes a comprehensive set of statutory duties on strata managers including to hold minimum education requirements as set out in the Regulations. The Regulations will list what qualifications a strata manager must have and the timeframe by which they must have obtained that qualification.

SCA (Vic) looks forward to partnering with CAV to deliver training to Owners Corporation Managers, to uphold professional standards and practices in the industry.

Consumer Education Forums

We call for a Memorandum of Understanding to be negotiated with SCA (Vic) to produce and deliver forums across Melbourne metro and Regional areas for consumers, Lot Owners and occupiers, service providers and local government staff to ensure they are sufficiently equipped to understand and comply with the new laws. This could also include inter-departmental and regulator information with VBA and DELWP on new pool and spa safety, for example.

Prior to and following the introduction of the current Act in 2006 and Regulations in 2007, CAV contracted this peak body and a stakeholder engagement consultant to produce consumer education materials and training. SCA (Vic) co-ordinated and held forums throughout Victoria. It was evaluated as extremely useful by attendees. With these amendments and an RIS process we urge CAV to engage SCA (Vic) to do the same as soon as practicable.

CLAUSE COMMENTARY

Clause 7 of the Bill inserting new section 17A of the OC Act – Water on common property

While the intent of this new section is welcome, the drafting may be unintentionally detriment to OCs. It appears to create an unwarranted and unacceptable liability on the OC. It legislates that an OC becomes liable for water that flows 'on the common property'. This is in contradiction with the provisions in Section 16 of the Water Act 1989. Consideration should be given to clarifying the purpose of this section within the wording used; i.e. to grant the right for an OC to harvest water by capturing water that falls, is located on or flows from the common property.

Clause 13 of the Bill inserting Section 23A of the OC Act - Owners corporations may levy fees in relation to insurance

To achieve the intent of this section and enable OCs to levy fees in relation to insurance, authority should be given to an owners corporation to recover the cost of an increase in an insurance premium based on the assessed risk of any particular lot; i.e. where the use of a lot is designated for a purpose that increases the risk exposure to the OC development as a whole and subsequently increases the premium payable e.g. a tattoo parlour. This is distinct to only having the authority to recover an increase in the premium after it is driven up by a particular and qualifying claim.

Clause 14 of the Bill substituting words in Section 24 (2A) of the OC Act – Extraordinary Fees

Clause 26 of the Bill amending Section 49(1) of the OC Act – Cost or repairs, maintenance or other works

The Bill proposes that the word 'undertaken' be removed and substituted with 'carried out' within Section 24 and s49(1) of the OC Act. Query is raised if this change is to clarify the frequently addressed issue at VCAT as to the cost only being recoverable after the fact (i.e. the work having been completed). If yes, and the issue relates to the tense of the word; i.e. and/or to be carried out, or only after work is carried out, we confirm that the even with the substitution of this word as proposed, the contention remains.

Clause 15 of the Bill amending Section 28 of the OC Act - Liability of lot owners

The Bill introduces an owners corporations authority to levy in ways other than by lot liability or the benefit principle, but it appears that section 28 of the OC Act fails to capture the liability of the lot owner to pay to the owners corporation, any such fees levied according to newly introduced authorities of an OC. Section 28 does not appear to capture the owners corporations right to recover as a debt owed to it, any unpaid fees levied by lot entitlement with respect to insurance premiums [s23A], or recovery of costs associated with insurance excesses and qualified insurance claims [s23A], or with regard to particular use of a lot [s23(3A)].
Section 28 therefore requires correction to avoid these unintentional consequences.

Clause 20 of the Bill addressing Section 37 of the OC Act - What must a maintenance plan contain?

SCA (Vic) welcomes the intent of the Bill to require the highest tier OCs to have a maintenance plan, and to the lesser extent the lower tiers to at least consider one. It should be noted however that the majority of Victorian OCs are between 3-9 lots and will fall into the lower tiered categories; therefore increasing the risk to all these owners who may choose not to contribute to a fund and face financial hardship at the time capital items of expenditure are required. We believe maintenance plans should be linked to depreciation of items to allow for end-of-life-replacement and any repairs. All OCs should have a maintenance fund.

The OC Act would also benefit from inclusion of a section under Maintenance Plans to determine how often the plan must be reviewed/updated; i.e. a 10-year plan after the first year is no longer a plan for 10 years but nine. By interpretation this would require the plan to be updated annually, incurring annual fees. A fifteen-year plan determined at the on-set provides for a 10 year plan up to five years into the plan so could be reviewed/updated every five years.

Clause 29 of the Bill inserting new Division 5A of Part 3 - Disposal of goods abandoned on common property

SCA (Vic) raises queries regarding this new and welcomed introduced power for an OC to deal with abandoned goods.

Of concern is that a limitation, possibly unintentionally, is imposed on OCs ability to remove abandoned goods i.e. only those that 'block access'. An OC, according to its ownership of common property, powers and functions needs the ability to remove any goods abandoned anywhere on common property e.g. sometimes goods are left within stairwells that are used as emergency exits, foyers, basements etc. It should not only be those left in driveways. Vehicles are a common and extremely costly issue but not the only problem.

We also seek clarification of the following questions to avoid incorrect application of the removal process, as well as to minimise recurring problems.

- it is commonplace that the person/party abandoning goods in an OC is not known / is un-identifiable so to whom or how should notice be given? [s53B (2)]
- if an OC is only permitted to retain proceeds from the sale of abandoned goods that equal the expense incurred for their disposal, what must happen with any surplus funds received? [s53B(1)(e)]].
- Can costs recovered include cost to move and store the goods in a safe place, send notices etc. in addition to the cost to dispose of the goods?
- What is a 'safe place'? [s53C].

Clause 31 of the Bill inserting s61(3) of the OC Act - Insurance for lots in multi-level developments

SCA (Vic) seeks clarity and correction on proposed section 61(3) of the OC Act. The draft proposes that liability to insure a building within a limited owners corporation is the responsibility of the limited owners corporation. However, section 30 of the Subdivision Act 1988 provides that ownership of common property affected by a limited owners corporation, is vested in the lots affected by the relevant unlimited owners corporation as tenants in common in shares proportional to their lot entitlement. If this section of the OC Act is not corrected it will leave owners within multiple owners corporations exposed to inadequate and/or non-existent insurance cover for all liable parties.

Clause 34(2) of the Bill inserting Section 67(2)(k) - What documents must be provided at the first meeting?

To avoid unnecessary confusion SCA (Vic) suggests that an explanation be provided as to the type or particulars of the 'asset register' required; i.e. plant and equipment for building replacement (maintenance plan) purposes.

SCA (Vic) welcomes the stipulation of the additional documents that must be handed over at the first meeting of the OC. It will not only assist professional management of the OCs, but also equip an OC with data in a timely manner and avoid angst trying to obtain the details at a later time when issues arise.

It is unclear in subsection (2) of s67, to ascertain whether or not such warranties are capable of assignment. Legal advice provided to SCA (Vic) is that generally this is not possible, although welcomed.

Clause 36 of the Bill amending Section 68 of the OC Act - Obligations of initial owner

The initial owner (builder/developer) in this Bill is now only responsible to comply with their obligations under the OC Act whilst only holding the majority of lot entitlements [s68(3)].

With ordinary votes requiring only one vote per lot, it may also be necessary to ensure initial owners are also obligated to comply with relevant sections of the OC Act whilst they are the owner of 'majority of the lots' also i.e. it should be either/or.

In this same section, there may be the opportunity to clarify the term 'initial owner', which as it stands may unintentionally capture the surveyor appointed by the developer; whom we understand can also apply (i.e. be

the applicant) to register the plan of subdivision. It may be, for the purpose of this section and similar, that it is the registered proprietor of the land at the time of registration, that is the 'initial owner'.

Clarification is sought also to confirm if the 'initial owner' is intended to be something or someone other than the 'applicant for registration of the plan of subdivision'; references as used in ss 66, 67, 67A, 67B & 143D. It appears they may be one in the same, with the definition given to 'initial owner' in the proposed Bill [s 68] being identified as 'the person who was the applicant for registration of the plan of subdivision', although both the term 'initial owner' as well as its meaning without the term is referenced throughout the proposed Bill in varying locations.

We identify also that section 4A to be introduced should include the word 'nor' after subsection (a) not 'or' which would indicate the provision of (a) or (b) applies to the initial owner rather than both provisions (by way of restrictions) applying.

CAV could also consider applying penalties on developers (initial owners & applicant for registration of the plan of subdivision) for non-compliance with their obligations under the OC Act [ss 67, 68].

We call for the Occupancy Certificate to be withheld until all building permits, documents, warranties and product information is provided by the initial owners to the OC. This will avoid issues with recalled items, replacement, repairs, faults, end-of-life dates for maintenance plans and; importantly, dangerous, non-compliant and substituted fixtures, fittings and building materials.

Clause 40 of the Bill amending Section 85(2(a) of the OC Act – Notice of ballot

It may be an unintentional consequence of this amendment that ballots only ever be open for 14 days as opposed to 14 days being a minimum; i.e. there appears to be no authority granted to an owners corporation to extend a longer time period for return of a ballot.

'the closing date for the ballot, being – (i) 14 days after the date of the notice '

SCA (Vic) also seeks clarity as to whether a ballot can be closed when majority of the ballots are returned and/or whether the ballot can only be closed after the full extent of the intended duration.

Clause 42 Division 6 of Part 4 substituted

SCA (Vic) acknowledges and welcomes the introduction of section 89C(2); committee members only appointing other committee members to represent them by proxy at a committee meeting in their absence.

To support the efficient use of proxies, a prescribed proxy form should be created for the sole use of committee meetings. The existing form provides for attendance at a general meeting, special general meeting, a ballot and/or for a lot owner to appoint a proxy to a position on the committee. It does not currently support a lot owner in their position as an appointed committee member to appoint a proxy in their absence to a committee meeting, disenfranchising them.

Clause 42 of the Bill inserting a new Section 88 of the OC Act – Voting on a resolution of the owners corporation by ballot

This section provides that a person may vote on a resolution of the OC by completing the ballot form and forwarding it to the secretary of the OC 'in accordance with the rules of the OC'. The model rules of an OC however (being the default rules of all OCs) are silent on what this process is, so how does an OC comply in the instance where no additional/special rules have been registered?

It may require that the legislation reference 'in accordance with this Act' being the OC Act or that the existing Model Rules be updated to include basic provisions for an OC to adhere to.

Clause 44 of the Bill inserting Section 97(1A) of the OC Act – Interim special resolutions

As stipulated in SCA (Vic)'s original submission, additional types of resolutions are not believed to be necessary. SCA (Vic) continues to support no change to interim special resolutions.

In principle the proposed change appears not to achieve much more than the existing provisions. It appears only to reduce the current requirements to achieve an interim special resolution with no greater gain. The newly introduced section s97(1A) appears to suggest that whilst a quorum is still required, as long as all votes cast are in favour, and none object, an interim resolution would be achieved. Therefore being recognised as an unopposed interim special resolution. It appears that the difference to the requirements of s97(1) is that lots may simply abstain from voting and not impact the OCs decision. If this is not the intent, and this section remains, then drafting may need to be re-visited. In particular s97(1) will also benefit from re-drafting to clarify the process to calculate an interim special resolution.

In accordance with section 96, voting towards a special resolution may be calculated by either 'lot entitlements of all the lots affected by the owners corporation' or 'votes for all the lots affected by the owners corporation'. Section 97(1) identifies that an interim special resolution may only be calculated by 'votes for all lots affected by the OC'. It is limited in the fact it does not provide for calculation of votes by 'lot entitlements' also.

Also of note is that this additional type of interim special resolution [s97(1A)] only applies to meetings and not to ballots. If this does not accurately reflect the intent of the Bill, then the wording requires amendment.

Clarification is also sought to determine what 'total votes' actually means within the first threshold for interim special resolutions; i.e. in its application in s97(1). Does it relate to the total number of potential votes according to the number of lots in the OC (which remains constant), or the 'total votes' according to who is financial and has a voting right at the time of the ballot or meeting? Keeping in mind for continued consistency that the latter stance impacts ordinary resolutions only, as non-financial lots are permitted to vote in both special and unanimous resolutions.

We also highlight to CAV that the Bill provides that s97(1A)(a) ends with the word 'and', and that the OC Act 2006 version incorporating amendments as at 1 February 2019, provides the end word to be 'or'. The incorrect word completely changes the intent and interpretation of this section.

Use of the word 'or' would intend this type of interim resolution to not require that a quorum be present and work towards achieving outcomes in inactive OCs as per the summary of reform proposals. Although would require additional provision for determination of votes in favour.

Use of the word 'and' as per the Bill purports to uphold the explanatory memorandum requiring a quorum to be present but the vote in favour to be unopposed.

Clause 45 of the Bill updating section 100 of the OC Act - Election of Committee

This section would benefit from clarification of the process for election to the committee; e.g. does it require a motion and votes for/against per nomination, proportionate representation, and/or preferential voting in an instance where more nominations are put forward then there are places on the committee.

Clause 51 of the Bill amending Section 119 (1) (1D) of the OC Act - Appointment and removal of manager

SCA (Vic) would welcome the option for OCs to enter into five year terms where a contract is being renewed; ensuring therefore that the OC, having been managed by the OC Manager for a term prior, is familiar with the service offered and is making an informed decision to re-appoint and gain the cost benefit.

A restriction on terms removes the power of an OC to negotiate a better fee for service for longer term contracts.

Clause 52 of the Bill introducing section 119A to the OC Act – Contract of appointment of manager

We urge CAV to re-consider this issue and permit automatic roll-over periods that extend at least until the next general meeting, as per industry practice. For small businesses, which are the majority of strata management businesses in Victoria, a month-to-month contract can be severely detrimental to the business operating costs and the retainment of staff. OCs can make the decision to re-appoint the manager for a further term and enter a new contract at the next meeting. An automatic rollover that extends for at least a three-month period will provide adequate time for management of staff redundancy, while at the same time providing adequate time for the committee to prepare a proper tender and selection process. One month is just too short a period for business management. SCA (Vic) continues to express strong concern that in essence, an OC has the ability to terminate a contract of appointment with only one months' notice where intention of renewal has not been given.

Clause 58 of the Bill inserting section 138B of the OC Act – Power to make rules regarding external alterations and other works affecting lot owners

The limitation to withhold reasonable consent to the installation of sustainable initiatives is an honourable concept that SCA (Vic) welcomes. Consideration may need to be given however to the drafting. Reference to 'on the exterior of lot' can vary in its application; i.e. whether it is giving a right to installations on private property or common property, which varies from property to property and is determined solely by the surveyors drafting of the plan of subdivision. The explanation of 'sustainability item' may also be limiting in its description; i.e. it should also include tanks, window films, etc.

Clause 60 of the Bill inserting section 141A of the OC Act – Occupier to ensure invitees comply with rules

SCA (Vic) welcomes the introduction of this new clause to the OC Act to clearly identify an occupier's responsibility for the behaviour of their guests.

We do however note that the drafting falls short of working comprehensively towards resolving issues experienced by OCs when non-owner occupiers and/or their invitees behave badly; i.e. as there is no obligation on a lot owner to work alongside the OC to address the issues at hand.

We appreciate that it may not be fair for an OC to hold a lot owner physically or financially liable for the actions of their tenant and/or invitee, the landlord/lot owner is removed from liability to even support any process to address or resolve the dispute. The lot owner is the party that can hold the occupant accountable, i.e. in line with any rental agreement. The OC is not a party to any contractual obligations for use of the lot owner's apartment nor to be made aware of the occupant's name and/or any forwarding address in circumstances where the occupant is to vacate the lot. This limits the OCs ability to pursue resolutions to any such matters.

Clause 63 of the Bill inserting Section 150(2A) of the OC Act – Availability of register

SCA (Vic) welcomes the provision to prohibit a lot owners representative from requesting a copy of the register for a commercial purpose without the OC's consent. Clarity is sought however that the drafting of this section will not unintentionally prevent access by a lot owner's representative who is conducting a strata search on behalf of a potential lot owner to assist the purchase of a lot. The OC Act may benefit from a definition of 'commercial' in this regard. Similar provisions should be included within Section 146 of the OC Act providing availability to view and/or obtain copies of OC records.

Clause 87 of the Bill inserting section 27EA of the Subdivision Act 1988 - Initial owner to engage surveyor

SCA (Vic) appreciates the value of this new section being inserted into the Subdivision Act, but it may be that in its drafting, the requirement inadvertently limits the initial allocation of lot liability and lot entitlement in a plan to that prepared by a licensed surveyor.

The provision omits the engagement of other professionals, such as an expert quantity surveyor (with specialist skills in property economics, asset management and tax depreciation) and/or property valuer who may also be qualified to set units of lot liability and entitlement in owners corporations.

In determining that units of lot entitlement must be set on 'market value' it would appear that a qualified property valuer is required. Property Valuers are not licensed in Victoria. SCA (Vic) understands that further comments are to be provided by the Australian Property Institute (API representing Property Valuers) and Consulting Surveyors Victoria (CSV representing Consulting Surveyors) in this regard.

Listed below are suggestions from SCA (Vic) for the further consideration of CAV; to clarify/correct anomalies in the existing OC Act, that are yet to be addressed but require attention.

s59 Reinstatement and replacement insurance

Reference within subsection (1) to 'buildings on common property' is invalid when applied to plans of subdivision where depth and height limitations do not apply.

s97 What is a special resolution?

It is apparent that in practice, the provision for interim special resolutions, is being applied incorrectly by OCs, their Managers and potentially VCAT.

A revision of the wording and/or provision of FAQs as to the intent of this section would greatly support not only the correct application of this section, but also the further intent of the new provision 97(1A).

Is it that where a quorum is present

- 50% of the attendees must vote in favour of the motion and less than 25% of attendees against; or
- 50% of the total votes of the OC must vote in favour and less than 25% of the total votes against.
    - (Example, in an OC with 150 lots, a quorum is 75, but say 80 lot owners attend) according to dot points above for an interim special resolution to be achieved, which of the following is required;
- 40 (50% of 80) or more lot owners to vote in favour and less than 20 (25% of 80) against
- 75 (50% of 150) to vote in favour and less than 38 (25% of 150) against.

Clarification will assist define and is essential to allow correct interpretation of the threshold outlined in section 97 and referenced in new section 97(1A); in particular the terms 'total votes for all lots' and 'those votes'.

s81 Minutes of meetings

Is it the intent of the OC Act that minutes of a meeting (where there is a quorum present) are not distributed to all lot owners until the 12-15 month period after that meeting; i.e. currently only minutes of meetings where there is not a quorum present are required to be distributed to all Members. The only other obligation to distribute minutes (i.e. when a quorum is present) is for the minutes to be attached to the agenda of the next general meeting (some 12-15 months later). The suggested alternative is that minutes are distributed within the 3-4 week period following the meeting (where a quorum is present) and 14 day period without a quorum (as currently exists). This will enable all owners to be made aware of the decisions made that will affect them in the ensuing 12 month period. A statement may be included on the notice for the next meeting that a copy of the previous meeting's minutes can be made available upon request. A professionally managed OC may advise of any intranet site or the like, where access may be easily made available; also reducing printing and postage costs incurred by the OC.

s134 Address of new owners

Common challenges experienced by strata managers arise from the relaxed wording of this section of the OC Act. A vendor and purchaser is responsible to advise the OC of the name and address of the new owner within one month. This permits the advice to be handwritten, via post or email but in no formal document that confirms settlement has occurred and the named party is the rightful and legal owner. A new owner can turn up to a general meeting without having notified the OC of their purchase and expects to have a voting right, arrears start to accrue and cause angst when the new owner and their address is finally identified and receives the accumulated fees. It is also of concern that an OC relies on this information as provided, and VCAT determines that fee notices are invalid as the named entity is inconsistent with the title to the property or the inaccuracy of the last known address of the lot owner.

A potential solution to this issue may be the inclusion of a requirement (within the relevant Act) that the Notice of acquisition and disposition be provided to the OC at settlement. SCA (Vic)'s involvement to streamline this process is welcomed at any stage of the legislative review process and with relevant parties; i.e. PEXA processes, Sale of Land Act etc.

Dispute resolution

Whilst an OC is given the authority to receive complaints and manage disputes, the OC is not empowered to engage proactively in activities to build community to work towards minimising disputes in the first instance. Owners corporation laws completely fail to recognise a role for an owners corporation to actively build a sense of community within a OC development. The consequence of this is to deny the owners corporation the right to spend money on this activity. To overcome this problem rules and other workaround solutions must be used to expand the functions of an owners corporation to include community building.
The functions to be expanded to include:

- Strategic Planning 5 to 10-year plan, to assess their current reality, identify existing challenges and brainstorm, discuss and ultimately create a forward-looking vision of the community's future.
- Develop community spirit and the ability to encourage interest groups, provide seed funding to those groups.

SCA (Vic) recommends the Act be changed to expand the functions of an owners corporation to include community building.

A number of large master plan communities consisting of 2000 to 4000 lots have been completed and many are in development stage. Very few are being created with a sense of community or a vision of what that sense of community is. The result is a large number of residents living together in separation without a common goal and "us and them" fractions between limited OCs, tenants and owners, the unlimited OC and developers (particularly in a staged development). Planning permits include obligations for owners corporations to manage public open space, encourage community use in the public open space and manage heritage buildings and facades and provide access to historical societies to engage in the community.

The opposite is also happening, whereby the developer puts in place community initiatives which they fund and administer until handover. The OC then has all the social fabric but no power to continue. These initiatives are broad, including activities such as dog training classes, health and well-being activities, community vegetable gardens, learn to fish etc. and aren't limited to a Christmas tree or party.

Owners corporations of the future are not only a vehicle for embedded energy networks, decentralised water systems, marina management, and luxury resort management; they also have a social obligation. They will be the preferred choice of living for those over 55 years, families, DINKS, singles, immigrants, low income and high income, a real social mixing pot.
Maintaining social harmony will be and should be a priority.

Disability discrimination law and strata

SCA (Vic) strongly urges CAV to address and amend the law so that owners corporations are not deemed 'service providers' under the Equal Opportunity Act 2010 (Vic).

There was an important recent decision with respect to this definition; in that it identified owners corporations as such 'service providers' and accordingly as the responsible entity that needs to make, and pay for, reasonable adjustments for disability.

As CAV understands the common property of an owners corporation is not public property nor is it to be made automatically available to the public to access. It is the private property of the owners corporation; being shared by all lot owners. Even within multiple owners corporations not all members of the unlimited OCs are given rights to automatically enter property of the limited owners corporations, or one limited OC of another. As such the OC should not be deemed a 'service provider' under the Equal Opportunity Act.

In terms of who should bear the financial burden, it is not fair that it is borne by someone's neighbours. Rather, the law should be clarified/changed such that instead it is a government responsibility to provide services and contribute funds, where financial support is needed. [Compare vis-à-vis detached houses]

TENANTS AND OCCUPANTS REGISTER

SCA (Vic) is lobbying for an Owners and Occupiers Register to ensure the people habituating in the affected property, and adjoining properties, are contactable. Tenants, owners friends and relatives and sub-letting arrangement, short stay rental such as AirBnB need to 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 materials defects. This will also assist with recalls of appliances and faulty products.Until Lacrosse, only Lot Owners could be notified in case of emergency or evacuation. In practice, many owners are absentee, particularly in buildings under the remit of CSV. Regulatory changes enabled Owners Corporation Managers to be advised by fire safety, regulators, councils, to contact Lot Owners. We urge the Minister to begin consultation on the establishment of the register urgently.

CONCLUSION

SCA (Vic) predominantly represents managers of owners corporations and provides feedback on the operational aspect of the OC Act, SCA (Vic) with the support of its members strive to improve standards for the industry as a whole. We trust this is acknowledged in consideration of our comments, which seek to achieve a greater balance of existing inequities and improve protections for owners corporations and their members.

The content above is provided as feedback to the changes proposed, both in principle of the intent of the changes as well as technical issues worthy of your consideration within this review.

SCA (Vic) is extremely pleased that the government has, on balance, acknowledged and agreed with many of our policy positions which strive to improve not only application of the legislation but also improve protections for OCs and their members.

SCA (Vic) remains at your service to assist with your deliberations on this important legislation, which affects 1 in 4 Victorians, contributes billions to the economy and safeguards the value of property in the built environment.

Yours faithfully,
Strata Community Australia (Vic) Inc

Yours respectfully,

Maree Davenport
Chief Executive Officer (Vic)

Peter Scott
President