

Owners Corporations and Strata Properties Covid-19 challenges and opportunities

Levy and Fee defaults

Essential Safety Measures and Insurance

Regulatory Compliance

Cleaning and Sanitation

Property inspections.

Strata Community Australia (Vic) Ltd
SCAV

<https://www.strata.community/states/vic>

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STRATA COMMUNITY AUSTRALIA (VIC) LTD

BRIEFING PAPER

FROM: Strata Community Australia (Vic) Ltd SCAV

TITLE: Owners Corporations Levy, Rental, Operational and Essential Safety Measures

DATE: 14 April 2020

AUTHOR: Maree Davenport, CEO

EXECUTIVE SUMMARY

Strata Community Association is the key National stakeholder in the sector.

It is necessary to consider a broad range of financial solutions to alleviate the financial pressure on Strata Corporations, including Commonwealth and jurisdictional Government funding assistance and regulation relief during this critical incident.

The National strata sector:

- insured value is nearly \$1 trillion
- directly employs more than 9,000 people (4,300 strata managers and 5,000 others).
- employs 3 million casuals performing works worth a total of \$5.7 billion (i.e. landscaping, tradesmen etc)
- expends \$903 million on professional services such as lawyers, valuers and insurers.

In Victoria

Owners Corporations are not-for-profit entities and simply do not have enough cash reserves to cover Lot Owners defaulting on levies and fees. Current legislation only mandates OC's greater than 100 lots or with a turnover \$200,000 to have a Maintenance Plan with funds held for specific purposes. These funds are not available for routine maintenance and payments like insurance, cleaning, sanitation which are included in annual fees, usually paid quarterly.

Decision making

Lot Owner apathy results in about 70% not having a committee. The quorum for an annual general meeting is at least 50 per cent of the total votes or if 50 per cent of total votes are not available then 50 per cent of lot entitlements. While the Annual General Meeting can still go ahead without a quorum it can only make 'interim decisions'. The Owners Corporation can act on interim decisions after 29 days or with a petition of owners representing 25 per cent of the total lot entitlements.

Levy and Fee defaults and debt recovery

With media attention and Government initiatives such as Job Keeper, along with hardship clauses included for bank loans and utilities bills, owners may assume they can defer Owners Corporations Levies and Fees. This is not the case.

Non-payment of levies will mean the OC will become insolvent:

- Owners Corporations could be under or uninsured, placing all residents, visitors, trades and contractors at risk
- There are no hardship provisions in the Owners Corporations Act 2006, enabled regulations or proposed in legislation before the Legislative Council
- There is no legal framework to 'write off' or defer levies
- Those who can pay will have to carry those who can't; and
- VCAT fee recovery applications are suspended.

Despite and as a result of Commonwealth and Victorian stimulus policy settings, SCAV envisages Lot Owners will withhold the Owners Corporations Levies payable as they 'wait and see' if their own income and rental return is affected. We forecast non-payment arrears occurring in the third quarter of 2020 and for the balance of next 3 years.

We are surveying our 1000 + members and will provide empirical evidence compiled.

Pressure on building facilities and essential services

The impact and increased demands on the essential services of residential buildings due to forced isolation, restricted travel and unemployment needs to be considered. It is assumed that the hours in residence will dramatically increase and therefore the demands on the facilities within Strata Buildings will be increased accordingly

As self-isolation requirements continue, there will be a corresponding increase in pressure on essential services such as plumbing, utilities, waste management and the costs associated with them.

Increased demand on services cannot converge with a decrease in funding of these services.

Occupational Health and Safety (OH&S)

Site compliance issues put trades and contractors at risk if the OC is not maintained. A rise in the number of individual lot owners defaulting on levy payments will have a broad collective impact, even for those who are less directly affected by the economic fallout of Covid-19. The obligations of the Strata Building falls to the Owners Corporation.

Any failure to fulfil an obligation falls to the collective, and not the individual, for liability.

International Students

1 in 5 residents of the City of Melbourne are international students. Victorian Government advice for international students is to defer or cancel, including returning 'home'.

This leaves landlords without rental income and little opportunity to recover debts or re-let the property.

Real Estate sales and rental property inspections

Residents in Owners Corporations deserve to be advised and have assurances regarding access for real estate inspections, given the strict rules banning visitors.

Community infection risk mitigation

SCAV Owners Corporation Manager and Supplier members seek to actively reduce the risk of transmission of COVID-19 in Owners Corporations, on common property, shared areas, to OC Managers, Lot Owners, residents and visitors to safeguard the multi-dwelling and wider community as a whole.

These risk mitigation strategies and activities can only be paid through Owners Corporation levies and fees.

BACKGROUND

This COVID-19 critical incident has resulted in unanticipated therefore unbudgeted disruption for property related payments. While National Cabinet and the Morrison Government have acted swiftly with *Job Keeper¹ Payment: Supporting businesses to retain jobs* and a Code of Conduct on Commercial Tenancies² it has not made any provision to safeguard payment of residential strata corporation fees and levies.

With the exponential rise in strata living due to lifestyle choices and population growth, 1 in 4 Victorians, around 1.5 million Victorians are living in or owning in property affected by Owners Corporations. There are currently over 85,000 active Owners Corporations in Victoria, covering more than 772,000 individual lots.

These bring together a wide range of people who have diverse goals, interests and expectations, as well as financial capacity. Victorian apartment dwellers include a higher proportion of single occupants (39%) and a lower proportion of families (9%). The 2016 Census revealed that there were more than 2.2 million occupied private dwellings in Victoria—nearly 20 per cent more than were recorded in the 2006 Census. Of these dwellings:

- **33.5 per cent were owned with a mortgage; and**
- **27.5 per cent were rented.**³

The majority of all owners, be they occupiers or investors, are vulnerable to the economic downturn resulting from COVID-19. Loss of income affects both lot owner and tenants. Both cohorts include older Victorians, people with disability, students and key workers.

Lot owners often choose to live in units and apartments at a lower, more affordable price point.

NON-PAYMENT OF OWNERS CORPORATIONS LEVIES AND FEES

Owners Corporations in Victoria simply do not have enough cash reserves to cover Lot Owners defaulting on levies and fees. Current legislation only mandates OC's greater than 100 lots or with a turnover \$200,000 to have a Maintenance Plan with funds held for specific purposes. These funds are not available for routine maintenance and payments like insurance, cleaning, sanitation which are included in annual fees, usually paid quarterly.

Lot Owner apathy results in about 70% not having a committee. The quorum for an annual general meeting is at least 50 per cent of the total votes or if 50 per cent of total votes are not available then 50 per cent of lot entitlements. While the Annual General Meeting can still go ahead without a quorum it can only make 'interim decisions'.

¹ https://treasury.gov.au/sites/default/files/2020-04/Fact_sheet_supporting_businesses_0.pdf

² <https://www.business.gov.au/Risk-management/Emergency-management/Coronavirus-information-and-support-for-business/Relief-for-commercial-tenancies>

³ <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13840-housing-affordability-in-victoria>

The Owners Corporation can act on interim decisions after 29 days or with a petition of owners representing 25 per cent of the total lot entitlements to:

- call another meeting
- give notice of special general meeting.⁴

As a result, there is no scope to deal with levy, fee arrears and non-payment. In self-managed Owners Corporations these may manifest in resentment, further withholding of OC levies/fees, leading to failure to pay insure and maintain Essential Safety Measures (ESM), sanitation and cleaning.

SCAV Member-managed Owners Corporations endeavour to resolve short and long-term issues with Lot Owners who choose not to be engaged. They seek remedy for non-payments and fee recovery with VCAT and prioritise property works.

With media attention and Government initiatives such as Job Seeker, owners may assume they can defer Owners Corporations Levies and Fees. This is not the case.

- Non-payment of levies will mean the OC will become insolvent
- There are no hardship provisions in the Owners Corporations Act 2006, enabled regulations or proposed in legislation before the Legislative Council
- There is no legal framework to 'write off' or defer levies
- Those who can pay will have to carry those who can't; and
- VCAT fee recovery applications are backlogged, and further exacerbated by the current suspension of Hearings.

With larger properties, particularly vertical, being commercial in structure, despite being residential in nature, Lot Owners and tenants wrongly expect and assume the Code of Conduct for commercial tenancies to support small and medium sized enterprises (SMEs) affected by the coronavirus, which "*outlines a set of good faith leasing principles for commercial tenancies including retail, office and industrial*" will assist mixed use properties with residential owner levies and fees.

Despite and as a result of these policy settings, Lot Owners are envisaged to withhold the Owners Corporations Levies payable as they 'wait and see' if their own income and rental return is affected. We forecast non-payment arrears occurring in the third quarter of 2020 and for the balance of next 3 years.

ECONOMIC IMPACT OF COVID-19 ON OWNERS CORPORATIONS IN VICTORIA

Strata 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. Based on some very rudimentary modelling within Strata Community Association, it is estimated that the average annual Owners Corporation contribution for general operations of Owners Corporations is **\$2,500 - \$4,000 per annum and \$1 billion per year is collected and spent on:**

- Essential Safety Measure (ESM) maintenance and inspection
- Insurance for Buildings and Common Property
- Sanitation and cleaning
- Plumbing, electricity and other general maintenance.

⁴ <https://www.consumer.vic.gov.au/housing/owners-corporations/meetings-and-committees/running-meetings>

Government has provided stimulus packages to the individual **between \$1115 - \$1,500 per fortnight** (before tax) per employee for the 6-month period spanning April 2020 to September 2020.

In addition:

- tenants cannot be evicted
- banks have frozen loan repayments for 3 months; and
- utilities can't disconnect for non-payment of bills.

The Federal Government is estimating at least 1 million people could be made unemployed, joining the 700,000 people already receiving unemployment benefits. That could take Australia's unemployment rate from 5.1 per cent to closer to 15 per cent and Victoria is forecast to be worst affected.

According to **ABS COVID-19 impacts business cash flow and turnover released on 7 April**⁵ Two thirds (66%) of Australian businesses reported that their turnover or cash flow had reduced as a result of COVID-19, according to results from the second Australian Bureau of Statistics (ABS) survey on Business Impacts of COVID-19.

- Nearly half (47%) of businesses made changes to their workforce arrangements as a result of COVID-19. For some businesses this included temporarily reducing or increasing staff working hours, changing the location where staff worked (including working from home) or staff being placed on leave.
- Two in five businesses (38%) have changed how they deliver their products or services, including shifting to online services. Over a third of businesses have renegotiated their lease and rental arrangements and a quarter have deferred loan repayments.

ECONOMIC INPUT OF OWNERS CORPORATIONS

The annual economic activity strata market represents a significant sector of the Australian economy. According to *The Australian National Strata Data Analysis* by UNSW⁶ in conjunction with SCA, in 2017 the national strata sector:

- insured value is nearly \$1 trillion
- directly employs more than 9,000 people (4,300 strata managers and 5,000 others).
- 3 million casual jobs in the strata service sector are worth a total of \$5.7 billion (i.e. landscaping, tradesmen etc).
- \$903 million is also spent by the strata sector on professional services such as lawyers, valuers and insurers.

OWNERS CORPORATIONS OPERATE AS NOT FOR PROFIT ENTITIES.

The levy funds are necessary for a building's day to day operations. Any spike in owner contribution defaults can have an adverse impact on the solvency of an Owners Corporation and strata titled building.

Levies in an Owners Corporation Cover:

- Insurance
- Management (Owners Corporation Manager)
- Building Manager / Security / Concierge
- Waste Collection Services
- Cleaning & Caretaking of the building (including disinfectant cleans)
- ESM – Fire Safety Inspections and Servicing
- Utilities – common power, water and gas
- Lift Maintenance and Servicing

⁵ ABS Business Indicators, Business Impacts of COVID-19 (cat. no. 5676.0.55.003)

⁶ <https://cityfutures.be.unsw.edu.au/research/projects/national-strata-data-analysis/>

- Garage Door Maintenance and Services
- Pump Servicing
- Bulk Hot Water System Servicing
- Gutter Cleaning (Especially coming into Autumn & Winter)
- Sewer Cleaning
- Any Other General Maintenance or Servicing
- Emergency Works – Burst Pipes, Weather Damage, Accidental Damage, roof repairs, Hot Water System Replacement/repairs.

These operational and maintenance works are not covered by insurance. If an insurable event occurs and a claim is made, the applicable excess and the premium needs to be paid.

As self-isolation requirements continue, there will be a corresponding increase in pressure on essential services such as utilities and waste management and the costs associated with them.

Occupational Health and Safety (OH&S)

OH&S non-compliance put trades and contractors at risk if the OC is not maintained. A rise in the number of individual lot owners defaulting on levy payments will have a broad collective impact, even for those who are less directly affected by the economic fallout of Covid-19. The obligations of the Strata Building falls to the Owners Corporation. Any failure to fulfil an obligation falls to the collective, and not the individual.

Essential Safety Measures, Sanitation, Cleaning is at risk

In the event that an Owners Corporation becomes insolvent, the health and safety of all residents may be undermined.

INSURANCE

Owners corporations with common property, except two-lot subdivisions, must have public liability insurance of not less than \$10 million for the common property.

Minimum insurance required for Owners Corporations:

- reinstatement and replacement insurance of buildings on common property
- public liability insurance for the common property.

Insurance for common property protects owners in the case of unexpected damage and injuries.

Public liability insurance covers owners corporation's liability to pay compensation in the case of any:

- injury, illness or death of a person
- damage or loss of property.

If levies and fees are not paid, Owners Corporations could be under or uninsured, placing all residents, visitors, trades and contractors and risk.

OWNERS CORPORATION STRUCTURE AND POPULATION COMPOSITION

Composition of owners corporations in Victoria⁷

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%

It is anticipated that a surge in unemployment and financial distress throughout the community will cause a significant number of owners within Strata Corporations (mostly apartment buildings) to default on their Strata Contributions, especially those with international students as tenants. Demographically:

- More than 2.2 million people live in apartments (10% of the entire population of Australia).⁸
- Most are young adults (0 – 39 years old).
- 35% are single, 24% are couples, 13% are couples with children, 9% are groups of flatmates and 6% are single parents.

Almost half are renters and low-waged workers make up a large proportion of the renters in high-rise buildings. Many of them are living in 'severely overcrowded' housing. **In 2018, there were around 227,000 international students from 170 countries in Victoria.**

1 in 5 residents of the City of Melbourne are international students. The Victorian Government has advised them to defer and cancel study and encouraged them to return 'home'.

This leaves landlords without rental income and little opportunity to recover debts or re-let the property.

<https://www.education.vic.gov.au/about/department/Pages/coronavirus-advice-international-students.aspx>

CRITICAL INCIDENT RESPONSE IN OWNERS CORPORATIONS

Critical incidents can be categorised as:

- immediate events that usually occur with little or no warning in response to an emergency event, such as a fire or flood,
- imminent events that usually occur with some warning in response to a preceding process such as a compliance notice from the local Council or another regulator,
- planned events that usually occur with considerable warning or notice and the timing of which may be adjustable to better enable management of the incident. For example, most cladding remediation works will be planned and therefore responses can be developed for affected residents to meet the anticipated timeframe.

⁷ Source: Consumer Property Acts Review Issues Paper No. 2 Owners corporations

⁸ Commissioner for Residential Tenancies

Common issues across all cohorts of renters during critical incidents include:

- lack of information or communication about the critical incident;
- maintaining amenity where there are significant building works;
- maintaining access to the premises for necessities such as clothing and medication;
- rights to compensation if amenity is seriously affected, or they are required to leave the premises;
- responsibility for the cost of any temporary relocation;
- organising the process of temporary relocation;
- finding appropriate alternative housing if they are required to permanently vacate;
- general difficulties understanding other rights, such as disputes with the owner's corporation;
- loss of established social networks;
- experience of poverty and social exclusion;
- impact on mental health.

Since 26 March, Owners Corporations across Victoria have been the most adversely affected by the Victorian State of Emergency provisions. This unprecedented and unforeseen critical incident affects the ordinary use or occupation of all buildings or may cause significant harm or detriment to the building's residents.

SCAV Owners Corporation Manager and Supplier members have responded to this Critical incident and seek to actively reduce the risk of transmission of COVID-19 in Owners Corporations:

- on common property
- in shared areas; to
- OC Managers
- Lot Owners, residents and visitors.

These risk mitigation strategies and activities can only be paid through Owners Corporation levies and fees, to protect the multi-dwelling and wider community as a whole.

The impact on increased demands of the essential services of residential buildings due to self-isolation, forced isolation, restricted travel and unemployment needs to be considered. It is assumed that the hours in residence will dramatically increase and therefore the demands on the facilities within Strata Buildings will be increased accordingly.

Increased demand on services cannot converge with a decrease in funding of these services

Ensuring continuity of Strata Corporations:

SCAV RECOMMENDATIONS

Commonwealth

A lifeline will safeguard insurance and essential services, including cleaning and sanitation.

The Commonwealth Government should encourage financial institutions to:

- Provide strata corporations the ability to pause repayments on their existing strata improvement/capital works loans for 6 months
- Remove penalties for Lot Owners breaking Term Deposits
- Remove 31 days' notice requirement to release Term Deposits with evidence of hardship and reduce process time, say 5 days
- Remove break costs for Strata Corporations accessing Maintenance/Sinking Funds from Term Deposits (31 day noticed required); and
- Remove fees on dishonoured transactions and penalty interest.

We ask the Commonwealth Government to reimburse Strata Corporations directly for arrears owed by individuals in receipt of Centrelink payments

We seek payment of Strata levies and fees directly to the Strata Corporations on behalf of recipients of Job Seeker/Job Keeper benefits.

This aims to ensure that insurance is up to date, Essential Safety Measures, sanitation and cleaning continue, When the debt is cleared (but not before) and Strata Corporations will reimburse government within 3 years.

We ask the Commonwealth Government to consider covering the cost of interest on strata specific loans from lending institutions, currently charging around 8%.

The Commonwealth can recoup cost through withholding part of stimulus payment (finalise in 3 years) through job keeper or job seeker payments. *(Refer SCA National information and submissions for further information)*

Victorian Government

To safeguard the Owners Corporations essential services and industry, we seek that:

- Registered Owners Corporation Manager (ROCM) be authorised to arrange finance/loans on OCs behalf
- ROCM are indemnified against action for acting in good faith
- Establish as a matter of urgency an Owners and Occupants Strata Register
- Recognise electronic strata voting online and on electronic platforms
- Prescribe voting forms for electronic transmission
- Electronic signing for document authorisation.

SCAV recommendations on urgent Victorian legislative amendment:

Current legislation only mandates OC's greater than 100 lots or with a turnover \$200,000 to have a Maintenance Plan and Fund. The *Owners Corporations and Other Acts Amendment Bill 2019* is yet to be passed but will lower the threshold to 50 lots or more.

All Owners Corporations greater than 2 lots have a compulsory fund and must have reserve funds equal to the annual budget at all times.

- this is to be achieved over a 4 year period from inception – achieved through one additional quarterly payment over the first 4 years, after which any additional payment is set at the AGM to top up the reserve to the annual budget amount
- hold a proportion of these funds be available for critical response incidents, including structural and cladding defects, health incidents and safety threats.

SCAV CAV Partnership Agreement - Victorian Property Fund

It is necessary to consider a broad range of solutions to alleviate the pressure on Owners Corporations, including Government funding to SCAV as key stakeholder.

SCAV is best placed to provide consumer education, communication to Registered Owners Corporations Managers and practical advice on regulation relief during this critical incident.

SCAV is applying for funds to develop, deliver and circulate resources along with online, telephone and packaged advice and support to Owners Corporations, Registered OC Managers, VCAT Members and staff.

SCAV is facing a significant financial loss as a result of cancellation of training, CPD and other Face to Face (F2) events and courses. This impacts on our capacity to continue much needed services which supplement Victorian Government services. CAV refers calls and queries to SCAV, a not-for-profit non-funded industry community organisation.

Our website is updated daily to include consumer information <https://www.strata.community/states/vic> and our Members Only area includes updated Practice Guidelines, advice and practical interpretation of Victorian Government directives for application in Owners Corporations. Industry suppliers are kept up to date.

Services to Government - In the past month we have:

- issued 3 Bulletins per week in addition to the *Stratability* newsletter
- delivered 6 free webinars with over 100+ members participating in each
- delivered weekly small group Webinars with Cladding Safety Victoria
- kept Minister and CAV up-to-date on emerging issues
- continued to work with VBA on ESMs, building access other issues
- liaised with DHHS on advice and information to self-isolating COVID-19 cases
- liaised with the Commissioner for Residential Tenancies on rental matters

- liaised with the VMIA on insurance issues
- Police and Emergency Services discussions on building access, safety and crime.

The CEO is included in meetings, briefings and been available to all Victorian Government and Agency staff on matters relating to Owners Corporations. SCAV staff are providing information directly to consumers and non-Members at no cost.

We seek the support of the Victorian Government to extend and indeed continue this important work

OWNERS CORPORATIONS LEGISLATIVE AND REGULATORY COMPLIANCE

In this unprecedented pandemic environment, there are some urgent issues which are problematic and in relation to.

1. **Section 69 (2) *Time between Annual General Meetings must not exceed 15 months*** Cancellation and postponement of AGMs and meetings. The practical result of the State of Emergency is that deferral of meetings is mandatory and will result in this period being passed. We ask the Minister to waive this requirement.
2. **Section 127 *Manager to Return Records within 28 days of termination.*** 60 Penalty Units. If termination has occurred and in the absence of electronic transfer capacity, material records, including financials, insurance, Essential Safety Measures and maintenance, owners records cannot be provided to the new Owners Corporation Manager or the Secretary of the OC Committee.
3. **Electronic Transactions (Victoria) Act 2000** – consent and capacity to receive electronic documents—lodging witnessed documents under the Subdivision Act.
4. **Witnessing documents with the Common Seal – time limit for lodgement.** With the OC & Other Acts Bill unresolved in Parliament, the Common Seal is still required on contracts.
5. **Management of Owners Corporations** complaints will be frustrated by an inability to meet if the parties do not have access to electronic communications means.
6. **Interruptions to building services and maintenance** including compliance matters, Essential Safety Measures if the service providers cease to conduct onsite visits.
7. The ***Meringnag v Interstate Enterprises Pty Ltd & Ors [2020] VSCA 30 (Meringnag)*** has wide ranging implications and we look forward to Minister’s clarification and the Government’s response.
8. **VCAT operation issues** are problematic for Lot Owners and Managers alike. Re-commencement of fee recovery hearings, with parties being advised as soon as practicable, is crucial.

PROPERTY INSPECTIONS FOR SALE OR LEASE

The property industry requires clear guidelines on access to Owners Corporations during this State of Emergency.

Access for sale and lease inspections in Owners Corporations requires entry through and use of Common Property and facilities including lifts, doors, lobbies and hallways.

It is imperative that Owners Corporations Managers are asked by Real Estate Agents to arrange building and property access to safeguard the health and wellbeing of all occupants.

Residents in Owners Corporations deserve to be advised and have assurances regarding access for real estate inspections, given the strict rules banning visitors.

We request the Victorian Government consult with SCAV and provide confirmation of proposed property access rules to enable development and circulation of Owners Corporations Practice Guidelines for industry and owners/occupiers.

CONCLUSION

It is imperative that 25% of the Victorian population who live in, own and are affected by Strata properties receive the support they need to assure their health, safety and wellbeing during this pandemic, particularly through the State of Emergency.

Registered Owners Corporations Managers provide an essential service.

Strata and Owners Corporations Levies and Fees pay for insurance, essential safety measures, cleaning and sanitation.

Without fees being paid, Owners Corporations will become insolvent.

Owners Corporations cannot comply with regulatory obligations and requirements if they are:

- uninsured
- not maintaining [Essential Safety Measures \(ESM\)](#) safety features required for a building to protect occupants in case of a fire. Non-compliance of ESMs not only puts occupants at risk, but also passers-by and adjoining buildings.

Residents in Owners Corporations deserve to be advised and have assurances regarding access for real estate inspections, given the strict rules banning visitors.

Strata Community Australia (Vic) Ltd seeks to work collaboratively with the Commonwealth and Victorian Governments to safeguard the strata industry, its employees, suppliers and most importantly, Lot Owners and Occupants.

Yours respectfully,



Maree Davenport
Chief Executive Officer



Peter Scott
President