

**New Victorian Waste Act and Waste Authority – a proposed
model**

Strata Community Association (Vic) Submission

16 October 2020

Introduction

Strata Community Australia (Vic) Ltd is the peak body for the Owners Corporations sector, which comprises residential properties ranging from two 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 more than 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.

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 per cent of all professional owners corporation managers, with over 800 members managing upwards of 450,000 lots. SCA (Vic) Associate members are industry suppliers, including waste management providers, 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.

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 (OC). 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, insurance premiums and waste management expenses. These are funded through fees/levies.

For further information about this consultation, please contact Shaun Brockman, National Policy Manager, SCA. Shaun.brockman@strata.community.

SCA (Vic)'s Response to the Waste Act and Waste Authority proposed model

SCA (Vic) Endorsement of the Establishment of the Waste Act and Waste Authority

SCA (Vic) recognises and acknowledges the overall intention of the new Waste Act and Waste Authority proposal put forward by the Department of Environment, Land, Water and Planning (DELWP). SCA (Vic) supports the intention of the new Waste Act and Waste Authority to meet future Victorian waste collection goals and act on *Recycling Victoria: A New Economy*.

SCA (Vic) proposes a series of recommendations in the following sections with the goal of enhancing the powers and efficiency of the Waste Act and Waste Authority from the perspective of the one in four Victorians who live in strata complexes such as apartments, townhouses, gated communities and retirement villages.

To make the recommendations, SCA (Vic) has developed **two key themes and provided additional comments** to answer the questions posed in the Options Paper, as well as advised of some of the issues identified in the industry through our internal consultations. Recommendations are included within each section.

Responses to the Options Paper

Theme 1

In response to the Options Paper Question - Do you agree with the establishment of a waste authority and the proposed approach (a new entity with powers to intervene in markets)?

Strata communities are critical to waste management

The importance of the contributions strata communities will make towards future recycling and waste initiatives cannot be underestimated. Based on the 2020 Australasian Strata Insights Report, more than 2.2 million people live in flats and apartments, the vast majority being strata titled.¹ This figure does not include other forms of strata title such as townhouses and community titled developments. Nor does it include businesses operating in strata titled commercial buildings. The estimated value of property under strata title in 2020 exceeds \$1.3 trillion.²

In Victoria, approximately one in four people live in a strata titled community of some description, with official estimates placing the percentage of the population between 19 and 31 per cent.³

With so many Victorians living in strata communities, it is critical to understand the unique set of circumstances and challenges that apply to waste management and recycling within strata complexes.

When undertaking the consultation process with SCA (Vic) members (strata managers, strata service providers), one of the most repeated points raised was that the **Victorian Government will need to ensure it considers the needs of the strata community, or it will struggle to meet its own criteria and milestones for recycling and waste.** The establishment of a new authority is similarly placed – without considering strata communities, a new Authority and Act will not be as successful as it could be.

Transparent, accountable, consistent and of good quality

Strata managers, service providers and lot owners have expressed concern that the previous governance of waste management has not been transparent, accountable or consistent. The new Authority and Act should explicitly include mandated and enforceable methods to ensure these criteria are met, including the ability of owners corporations and interested parties to access information relevant to waste management and enforce disclosure on this front as well. These measures should be especially applied to targets, complaints and include oversights by the Authority with fair processes including the options of governance of a dedicated commissioner and ombudsman.

¹ Hazel Easthope, Sian Thompson and Alistair Sisson, *Australasian Strata Insights 2020*, City Futures Research Centre, UNSW, Accessed at <https://cityfutures.be.unsw.edu.au/research/projects/2020-australasian-strata-insights/>

² Ibid, p6

³ Ibid, p66

The new entity should be able to roll out programs, but also needs to have the ability to enforce rules and regulations with market interventions, meaningful penalties and consequences.

Quality should be maintained by applying the principles above to establish and enforce minimum standards across the waste management landscape, including councils, private waste management contractors, recycling and refuse centres and other relevant parties.

Accountability in its current form needs to be bolstered, as there are ongoing conflicts of interest within the industry, especially in waste management plans.

The new entity should have the ability to roll out programs, but it also needs the ability to enforce rules and regulations with meaningful penalties and consequences. The Victorian Government should use its considerable regulatory and oversight powers as part of the new Act and Authority to make this transparency, accountability and consistency a reality.

Where is waste taken?

Under the current system there is no governance or guidance over where waste is taken after it is collected and therefore with regard to recyclables, how they are reused. People within strata communities expect that if they have followed procedures to recycle waste and pay fees to support the recycling process, that their waste would be recycled. Sadly, this has not proven to be true to form. At present general waste can be disposed of into landfill with little to no impact on the waste management company. The ability to provide this oversight and enforce measures is critical for a new Authority.

Proactive education campaigns

The new Authority should be empowered to provide education to lot owners and strata managers about waste management to improve knowledge and compliance. Proactive campaigns have a positive impact, fostering buy-in to government programs, and the establishment of a new Authority offers a great chance to run this kind of information campaign.

Theme 2

Waste collection charges – an unfair application to strata communities

Councils in most areas within Victoria hold responsibility for waste collection, and subsequently collect fees for the service via lot owners rates. In many councils, however, the council by way of a Section 173 Agreement as part of the local planning scheme, mandates that the owners corporation must carry out waste management services privately. The result is that lot owners within the strata scheme where this is mandated, are charged twice for waste services – once by the owners corporation, who has been instructed to carry out the services privately, and again by the council, who do not carry out any associated service but still require payment of the fee. This type of agreement, whereby council planning permits are increasingly requiring use of private contractors to be endorsed, is becoming more and more common, exposing an ever-increasing number of lot owners to this unfair double-charging.

Just as we have seen in the recent Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), a key area of misconduct was the practice of charging fees for delivering no service, with subsequently large fines imposed. This **double charging of owners corporations and by extension lot owners is grossly unfair**, and should be legislated against immediately, as well as part of the establishment of any new Waste Management Act and Authority.

In addition to the service fees, there are payments made to council to support recycling services and programs that have been discontinued or are being poorly carried out considering the money spent. These programs should be evaluated, and payment should only continue based on an effective evaluation.

A remedy to this current scenario would be to enforce that, where the council has mandated that the owners corporation must take out waste management services with a private service provider, there needs to be an equivalent fee reduction in council's rates.

Councils should not be able to include the controversial third-party clauses inserted into planning agreements and waste management plans whereby councils continue to receive the rates from lot owners even though they are not carrying out waste collection.

Some progressive councils have realised the unfairness of this situation and after negotiation with the owners corporation directly, have offered rate relief. The few councils that have undertaken these actions in liaison with specific OCs within their region are the Shire of Macedon Ranges, City of Casey, the City of Stonnington, City of Moreland and City of Whitehorse. Their actions should be considered when applying remedies to this issue.

Additional concerns and issues

Theme 1 and Theme 2 summarise the bulk of SCA (Vic)'s feedback to the Options Paper, however there are several additional issues that we seek to raise in relation to waste management in general:

- The decisions relating to waste management for a new building are made in the early stages of a development. The disadvantage to the owners corporation is that the agreement with council removes the choice of the owners corporation to either employ a private contractor or stay with council's waste management service and then unfairly be charged twice.
- As a whole, there is very little competition among private companies to provide waste management services to owner corporations where they are forced to use a private company rather than the council. Often, the features of the building (ceiling heights, ability to conduct turning circles etc.) rule out companies, leaving few options, poor competition and high prices for the owners corporation. Council makes their decision based on OHS issues, the levels of collection noise, size of the trucks needed to manage the waste of the said property, turning circles available for waste truck etc. All of which is influenced by the design of the development and conditions pertaining to road widths, turning points, basement heights etc.
- The Options Paper does not include details about the bigger picture for recycling in Victoria, including the regulations that will change Victoria and Australia's ability to send recyclables overseas. This in turn will have a large knock-on effect to waste management contracts, pricing and availability over the short to medium term. This issue has largely been ignored by councils, state and federal government in their planning for waste management.
- The new waste authority should enforce minimum standards for design of waste collection facilities within strata buildings, ensuring proper spaces are allocated for good management of hard waste, general waste, recycling and organic prior to collection. The Apartment Design Guidelines should be mandatory and updated to include organics which is not addressed at all. With no enforcement of the Guidelines it becomes an opt in process. Apartment guidelines [here](#).
- Where a private agreement is entered into, the private contractor should be required to offer all of the same services as the relevant council, including hard rubbish and organics as a minimum standard. The new Act should also include facility design for waste management within strata properties to cater for separated bespoke bins for soft plastics, electronics, organics, bread tags etc. Design considerations should include ventilation, door width, space to turn bins, washing facilities and expansion.
- Individuals living within strata communities would be more progressive with their waste management practices, such as attaining higher levels of recycling and waste compliance, if they were incentivised to undertake these practices by choice and competition. Right now, choice and competition are inadequate.
- The new Authority and Act could consider retaining a fund, to be administered by a government department, to put back into recycling centres for research and innovation.

- Any new laws should be evaluated for the impact they will have on cost to the consumer and should not increase consumer cost for waste management.