

## **Victorian Property Market Review**

*Strata Community Association (Vic) Submission*

**7 April 2022**



## Introduction

Strata Community Association (Vic) Ltd is the peak body for the Owners Corporations sector, which comprises commercial, industrial, and recreational 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. 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 Association (Vic)**

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

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## Victorian Property Market Review - SCA (Vic) Submission

### Summary

SCA (Vic) has responded to the questions presented in the consultation paper under the following themes for further consideration by the Expert Panel in the course of its delivery of recommendations to government:

- 1. What problems are faced by consumers as part of their purchase of real estate?**
- 2. What are the problems faced by consumers with respect to off-the-plan purchases?**
- 3. How well known and effective are the current avenues for dispute resolution?**
- 4. Is further reform required to ensure there is good practice within the industry?**

## 1. What problems are faced by consumers as part of their purchase of real estate?

### **Background**

*“Vendors have information (or at least access to information) about the property they are selling.*

*Purchasers do not. This information asymmetry is the basis for the current legislative requirements for the provision of information to purchasers by vendors and the real estate agents acting on their behalf.*

*Vendors are required under Section 32 of the Sale of Land Act 1962 (Vic) (the Sale of Land Act) to give a purchaser, before they sign a contract, a statement that contains matters relating to the property.*

*The Sale of Land Act was amended by the Sale of Land Amendment Act 2019 (Vic) (the 2019 amendments to the Sale of Land Act) with provisions that sought to strengthen the disclosure obligations for vendors.*

*Under Section 33 of the Sale of Land Act, vendors are required to provide a checklist to enable a prospective purchaser to identify potential issues with the property they are purchasing.*

*The Terms of Reference for the review seek to explore the effectiveness of the amendments to disclosure frameworks under the Sale of Land Act, including but not limited to, any further recommendations on options to further enhance transparency and equitable sales transactions, and whether they need to be further reinforced.”*

### **Questions**

#### **Are the obligations on agents and vendors to disclose material facts sufficiently clear?**

Without additional Guidelines published by Consumer Affairs Victoria (CAV), the obligations are not clear in the context of the amended *Owners Corporations Act 2006* and *Owners Corporation Regulations 2018*.

#### **Is the description of what constitutes a material fact in the CAV guidelines sufficient?**

The current Guideline is written to the exclusion of the *Owners Corporations Act 2006*, and as result, not all of the material facts would be reported in an Owners Corporation Certificate.

Material facts are tied to owners corporation records; however, this is not reflected in the composition of the owners corporation certificate, nor are these specifically defined in legislation, with the former documentation being more readily accessible to consumers.

The *Owners Corporation Regulations 2018* were amended in 2021 under Section 11(A), to include records that relate to Material Facts. A purchaser does not have open access to the records of the owners corporation to find the Material Facts.

Unless the purchaser happened to have rented the property, under the *Residential Tenancies Act 1997* and the *Owners Corporation Regulations 2018*, a renter of the property currently has more disclosure than an individual buying into an owners corporation.

**Therefore, the Guideline needs to be specifically incorporated into the *Owners Corporation Regulations 2018* to ensure that the disclosure is understood at the time of preparing the contract, rather than be used as a tool for breach of contract.**

**Should the disclosure of material facts be mandated as part of the Section 32 statement?**

Yes, and this should also be included under Section 151 of the *Owners Corporations Act 2006*.

**Should they be required as part of the Statement of Information? Are there other disclosure options that should be considered?**

Yes.

**Should Section 32 statements be published and maintained in a database to create a searchable historical record for a property?**

Yes, SCA (Vic) broadly supports the wholesale retention of information essential to the effective and efficient operation and maintenance of buildings, and for the benefit of consumers, by the relevant authority.

**Should vendors be required to provide prospective purchasers with building and/or pest inspection reports prior to auctions? If material facts are identified through these inspections, how and where should they be disclosed?**

Yes, **the presence of material facts identified by previous inspections may potentially be placed into an advertisement if appropriate**, given the large-scale use of online platforms to advertise properties as of 2022 compared to other platforms or mediums.

**Building and inspection reports should also be a requirement by the vendor to provide prior to the sale by any method, and not just at auction.** Purchasers are reluctant to spend thousands of dollars on a building and/or inspection report for every property they are trying to buy, especially for auctions where there is no cooling off period.

**Are there other key issues or possible improvements that the panel should consider? What would their impact be? How can government best give effect to them?**

**Better explanation is required for consumers specifically buying into an owners corporation, specifically concerning costs (such as levies for annual operating outgoings and long-term maintenance funds) and other implications where specific features of a strata-titled property are**

**concerned, such as an embedded network for energy supply, or any agreements entered into between the owners corporation and the local council/municipality under Section 173 of the *Planning and Environment Act 1987*.**

In particular, given the focus of the Victorian Government in achieving a net zero target by the year 2050 with 50 per cent renewable generation targets for the electrical grid and for private embedded networks by 2026 at the earliest in respective terms, the impact on many owners corporations, namely in financial costs for adaptation, will be considerably high. The removal of the domestic gas network will have a significant impact on multi-storey buildings to convert common hot water systems and cook tops from gas to electric.

**NABERS should be mandatory for residential apartments in the same way as applicable to commercial properties.**

**Clear disclosure by conveyancers and agents of what this will mean for people buying into strata developments where measures such as electrical conversions from gas appliances, organic waste disposal and other measures (electric conversions from gas, organics disposal, etc.) are not readily disclosed at present, should be accordingly considered.**

Furthermore, some information provided by Consumer Affairs Victoria (CAV) on public facing platforms for consumers buying into an owners corporation remains incorrect and/or outdated, as at the time of writing, **and should be promptly corrected as a matter of priority given the recent implementation of new legislation and accompanying regulations in December 2021.**

## 2. What are the problems faced by consumers with respect to off-the-plan purchases?

### **Background**

*“An off-the-plan contract is a contract for the sale of a lot such as an apartment or a unit, on a plan of subdivision where the plan has not been registered by the Registrar of Titles and before the building has been completed or in some cases, commenced. Settlement occurs at completion of the construction of the house or unit.*

*There are some advantages to buying off-the-plan, for instance the contract price is locked in at the time the contract is signed. This means the contract price does not change even if the property increases or decreases in value throughout the build.*

*There are also challenges that arise during the initial search period and before settlement when buying off the plan including that a purchaser cannot inspect the actual property and has to rely on the artists impression, floor plan and advertising material for information about what they are buying. There may be differences between the expected and actual finishes and fitting/appliances, and there may be unexpected changes to the plans and specifications after the contract is signed and before the building is completed.*

*In addition, the contracts are complex and can be over a hundred pages long. The contract is with the developer who in turn has a contract with the builder. While there may be a dispute over the building work itself there is limited recourse in any dispute with the builder and it may be difficult to hold the developer to account for building defects.*

*There are also issues for purchasers about the potential future financial liabilities for off-the-plan sales. Purchasers are often unaware about the estimated future costs associated with the property following the plan of subdivision, including rates, charges, and owners corporation fees. A vendor will be unable to provide accurate figures before a plan of subdivision has been registered.*

*Government regulation of off-the-plan sales has recognised these issues and specific provisions in the Sale of Land Act seek to protect purchasers in view of these specific circumstances.”*

## **Questions**

### **Should there be a requirement for designated key information to be provided in an easily accessible format?**

Establishment of a compliance checklist specific to consumers buying into an owners corporation should be considered by the Expert Panel – this includes the fundamental items and costs associated with the OC, such as mandatory strata insurance, maintenance plans and associated fees, and emergency procedures/plans.

Budgets should be applicable for a period of two years and removing maintenance costs because of warranties should be banned.

Defect repair protections should also be considered to ensure future owners are not left with significant costs to make their building compliant.

Presenting such information within the OC certificate, and if possible, at the point of advertising to include such factors as outgoings and total costs of living in a property (including the owners corporation) should be considered.

Furthermore, in general terms a prescribed building manual, once established, should be **stored in a centralised portal overseen by the VBA, either as its own standalone platform, or through the potential expansion of the Building Activity Management System (BAMS)**, for ease of access when required by the owners corporation/OC manager.

Timely access to building information and documents is especially important in the event that building defects are discovered, particularly after a considerable period of time following the handover of a building from the developer.

### **Should vendors be required to provide additional detailed information in the warning notice about potential changes to the lot, materials, and appliances?**

**Yes. This should be balanced by ‘reasonable’ changes** – for example, it is reasonable that a budget might vary 10 -20% from what has been disclosed at point of sale due to occurrences such as supply chain disruptions, tightening of the insurance market etc.

### **Is requiring purchasers to acknowledge they have read and understood the warning notice concerning the risks of entering into an off-the-plan sales contract a suitable and/or alternative to requiring independent legal advice being sought?**

#### **What is the cost of such legal advice?**

Yes; ensuring clarity and accessibility of all relevant information stands to benefit consumers buying into off-the-plan developments.

**Are prospective purchasers sufficiently informed about reasonable cost estimates (e.g., owners corporation fees)?**

No; this should be better explained in future resources provided by CAV or other relevant authorities considered under the scope of this review.

Recent changes to the Owners Corporations Act 2006, Section 68 (4B) requires a budget that is 'reasonable and sustainable' to be provided by the original owner. There are no definitions about what is reasonable or sustainable, and this is reliant on the judicial system to determine. This is hardly consumer friendly, and **there should be specific guidance on this definition so that consumers can feel more confident about fees that are disclosed.**

**Information about known costs or approximate cost estimates for owners corporation fees, strata insurance premiums, sinking and maintenance funds should be included as a baseline standard for consumers to be made aware of.**

**Should vendors be required to specify details of brand/model of appliances, finishes or equivalents that may be used in the sales contract?**

**Yes, and included warranties and maintenance schedules applicable to each should be specified as well. Such information should also be required to be attached to the subsequent sale of the property, so that future owners possess this data.**

If owners replace or add new equipment, brands, models, and warranties applicable to these items should form part of the ongoing disclosure.

**Should vendors be required to provide written notice to purchasers prior to settlement when substitutions have been made during the build and where appropriate for these to be included as a contract variation?**

Yes.

**Should government provide guidance examples of what could constitute material changes?**

Yes.

### 3. How well known and effective are the current avenues for dispute resolution?

#### **Background**

*“Situations relating to the sale and purchase of property are among the most complex transactions that most people participate in. The services of professionals, such as real estate agents, lawyers, and conveyancers, are often used in these transactions.*

*It is an unfortunate reality that in a very small percentage of real estate purchases or sales, issues or disputes relating to these services may arise. At present, the resolution of these issues and disputes can be complex and expensive.*

*The Terms of Reference for the review seek to explore the current avenues for dispute resolution and whether further reform is required to ensure consumers have greater access and awareness of the information about their rights and obligations and awareness of the options and avenues to resolve disputes.”*

#### **Questions:**

#### **What reflections do you have on the challenge related to dispute resolution outlined above? Is there additional context or evidence that supports the nature or extent of the challenges highlighted?**

**At present, no specialised body for informing and advising lot owners on owners corporation matters or providing information and advice in the event of a possible dispute with other lot owners or the owners corporation exists**, apart from a hearing undertaken with the Victorian Civil and Administrative Tribunal (VCAT).

VCAT hearings entail increased costs to consumers in a dispute scenario, while other matters remain unresolved or unclear due to an absence of a formal avenue to seek correct, accurate and impartial information and advice for lot owners.

Furthermore, on a frequent basis, both CAV and VCAT have repeatedly and wrongfully referred lot owners' enquiries, and occasionally, disputes to SCA (Vic), despite its inability and lack of legal basis to handle such enquiries.

#### **Are there other key issues or possible improvements that the panel should consider? What would their impact be? How can government best give effect to them?**

SCA (Vic) are currently undertaking research concerning the **proposal to establish a dedicated strata commissioner or agency or other entity to undertake the aforementioned responsibilities as they relate to lot owners.**

## 4. Is further reform required to ensure there is good practice within the industry?

### **Background**

*“The fairness and efficiency of the property market is influenced by the practices and conduct of the various professions that support the industry (which includes estate agents, agent’s representatives, conveyancers, and owners corporation managers).*

*To ensure only appropriately trained and skilled professionals are able to provide service, licensing and registration schemes have been established to ensure only those who meet specified requirements are able to provide services.*

*Ongoing education within professions often takes the form of continuing professional development (CPD) programs. These help to ensure that professionals stay up to date with best practice industry standards. Many professional bodies require their members to prove they have participated in a prescribed amount of CPD education and training, typically on a yearly basis.*

*This represents a key control on the quality of the services delivered by members of these professional bodies.*

*In industries where professional conduct has an impact on the wellbeing of the public, government may mandate that certain CPD arrangements are put in place. Examples include the Legal and Medical professions.*

*CPD is not currently mandated in legislation for either estate agents, conveyancers, agents’ representatives, or owners corporation managers. The industry body for each of these professions does require CPD for its members as part of membership requirements.*

*The Terms of Reference for the review seek to explore whether further reform is required to support agents and agents’ representatives to ensure there is good practice within the industry. This includes a focus on the CPD requirements for estate agents, conveyancers, and owners corporation managers. The review is exploring whether these requirements should be mandated by legislation.*

*The following sections outline the entry requirements and CPD practices for estate agents and agents’ representatives, conveyancers, and owners corporation managers.”*

## **Managers of Owners Corporations**

*“Managers of owners corporations are responsible for carrying out the functions of an owners corporation, which are to manage and administer the common property of a residential, commercial, retail, industrial or mixed-use development.*

*Section 178 of the Owners Corporations Act 2006 section requires that people in paid manager positions are registered by the Business Licensing Authority (BLA). To be registered, an individual must:*

- **Hold professional indemnity insurance for a minimum of \$2 million.**
- **Be over 18 years old.**

*Amendments to the Owners Corporations Act 2006 passed in December 2021, have introduced reforms related to the appointment of managers, including restrictions on registering a manager with a criminal record. An individual that has been convicted or found guilty of specific offences outlined in section 179(d) within the last ten years is not eligible for registration.*

*The Owners Corporations Act 2006 does not mandate CPD for managers of Owners Corporations. Voluntary CPD programs are available through CAV, **Strata Community Association (Vic)** and Real Estate Institute of Victoria (REIV). CAV encourages owners corporations to consider whether the manager they are proposing to employ is committed to ongoing professional development when they are selected.”*

## **Questions**

### **What reflections do you have on the challenge related to industry practice? Is there additional context or evidence that supports the nature or extent of the challenge highlighted?**

At present, enforcement of CPD against practitioners in both the owners corporation/strata management and real estate industries in the state of Victoria remains the responsibility of industry bodies such as SCA (Vic) and the REIV, with limited intervention by agencies such as the BLA, and CAV.

Such parameters currently do not enforce any meaningful sanctions against individuals or entities operating outside of these CPD schemes or contravening legislation or regulations governing industry; this, in turn, places consumers at heightened financial and compliance risks, unless action is taken to set minimum standards and a reasonable barrier to entry to mitigate such risks.

**What has been the impact of the entry requirements for various professionals as set out in the Estate Agents (Education) Regulations 2020, the Conveyancers (Qualifications and Experience) Regulations 2018, and the Owners Corporations Act 2006? Are changes required to these occupational licensing schemes?**

**How effective, consistent, and thorough are the CPD requirements and courses offered by the professional bodies? Do they ensure that professionals remain up to date with the latest legislative requirements and trends in the industry?**

SCA (Vic)'s annual CPD requirements as a requirement of membership, and high education and training standards ensure that all professional members are following best practice and following the most up-to-date information concerning legislative and regulatory requirements, as well as other developments affecting Victorian owners corporations.

**The capability of SCA (Vic) in ensuring members operate according to a high standard for their clients is unique and unparalleled; this can play a beneficial and considerable role in any future proposed regulatory model for owners corporation managers in Victoria.**

However, the application of CPD requirements by SCA (Vic) as an industry body is not mandated by legislation, and therefore does not presently extend to all currently operating owners corporation managers in Victoria.

The status quo may place would-be clients at greater risk of non-compliance with relevant legislation and regulations and presents greater financial risk to owners corporations.

Moreover, the Automatic Mutual Recognition (AMR) scheme set out in the Mutual Recognition Act 1992 of the Commonwealth (MRA). Victoria has adopted the AMR scheme under the Mutual Recognition (Victoria) Act 1998.

According to CAV, this scheme covers 'owners corporation managers,' despite the fact that Victorian owners corporation managers, or their companies, do not meet minimum standards to operate in New South Wales, the ACT, or the Northern Territory<sup>1</sup>.

**Owners corporation managers are not real estate agents or real estate property agents, and have distinctives, duties and skills and are not a function of the real estate framework and do not require licensing.**

However, to meet the AMR, **owners corporation managers in Victoria should be required to hold the same education level as counterparts in NSW, which is a Certificate IV Strata Community Management for the manager and a Diploma of Agency Management (Strata) for the Officer in effective control.**

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<sup>1</sup> <https://www.consumer.vic.gov.au/licensing-and-registration/automatic-mutual-recognition>

## **Do you believe there are merits to mandating CPD for estate agents, conveyancers, and managers of Owners Corporations?**

SCA (Vic) is currently researching several professional pathway options for the sector. One of these options is a co-regulation model.

**Under a co-regulation model**, government is able to set subject material (such as ethics, financials, and trust accounting) for practitioners in the property industry to fulfil on an annual basis, while the REIV and SCA (Vic), could undertake the enforcement of CPD as the Registered Training Organisation (RTO) for their respective member bases.

**Mandating CPD for owners corporation managers, in turn made enforceable by SCA (Vic) will ensure that the highest standards are met by industry, while unscrupulous operators that do not meet these standards are isolated to the greatest possible extent**, in what would prove a welcome boost to the consumer protection landscape, and in consumer confidence in industry.

SCA (Vic) also recommends the uniform establishment of mandatory CPD applicable to estate agents for the reasons outlined above.

CPD content would vary according to the license category specifically applicable to real estate professionals; for instance, Officers in Effective Control typically require higher standards of CPD, compared to other employees in this context, and a minimum standard of education applicable to this position should be established as a basic principle – both SCA (Vic) and CAV are in agreement as to the necessity of such a provision.

For further reference, in New South Wales, the current CPD quotas applicable to strata and owners corporation industry professionals comprise of the following content, according to the NSW Office of Fair Trading:

### **Officer in Effective Control:**

- ***3 hours of compulsory CPD topics applicable to license category;***
- ***3 hours of elective CPD topics, and***
- ***3 hours of business skill topics.***

### **Strata Manager:**

- ***3 hours of compulsory CPD topics applicable to license category, and***
- ***3 hours of elective CPD topics.***

## **How effective is the oversight of industry professionals? Are the available penalties sufficiently strong to discourage non-compliance?**

Oversight of industry professionals in the owners corporation management sector in the present circumstances applicable to Victoria is effective only in that it governs members of SCA (Vic), while non-members may continue to do business according to no set level of compliance to professional standards, placing consumers at greater financial and compliance risks.

Furthermore, while the BLA and CAV have oversight of the strata sector, neither have a track record of exercising any power to do so. **Therefore, a formal reporting and complaint mechanism should be established with both agencies that will inform the public about companies with a history of non-compliance with applicable legislation and regulations.**

**Are there other key issues or possible improvements that the panel should consider? What would their impact be? How can government best give effect to them?**

The growing proportion of Victorians living in strata-titled developments to approximately 50 per cent by the year 2050 means that in terms of the training content and resources applicable to real estate agents, **subjects specific to strata and owners corporations must be appropriately considered and covered.**

Considerable overlap exists concerning specific pieces of legislation affecting both the owners corporation and real estate sectors, respectively, including (but not limited to) the *Residential Tenancies Act 1997* and *Owners Corporations Act 2006*.

Therefore, it is an **imperative that Owners Corporations (strata) is at the forefront of future planning for any iteration of mandatory CPD to be applied to estate agents** under the scope of this review's recommendations.

**In conclusion, SCA (Vic) recommends that the Victorian Government consider the implementation of the following measures based upon the input provided to the Expert Panel undertaking this review:**

- ***Expanding membership of the Estate Agents' Council (EAC) to include SCA (Vic) membership outright, or observer status;***
- ***Ensure all future reviews of the property sector include expert input and analysis from a representative of the Owners Corporation (strata) sector;***
- ***Appointing a suitable entity to:***
  - ***Advise government about the impact on any policy on the sector before implementation;***
  - ***Protect, enhance, and represent the property rights of Owners Corporation (strata) members (owners) sector across all policy platforms;***
  - ***Be suitably resourced to be provide advice and assistance to lot owners and renters in Owners Corporation (strata) properties, and***
  - ***Provide a free mediation service for lot owners in Owners Corporation (strata) properties and inform and educate consumers from purchase, settling, living, and owning in Owners Corporation (strata) properties.***

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