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VIC

Review of the Retirement Villages Act 1986

Strata Community Association (Vic) Submission

28 October 2022



Introduction

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

If the strata manager is a person or company carrying on business as an owners corporation manager for a fee or reward in Victoria they must be registered by the Business Licensing Authority (BLA). Currently there are no minimum education standards or continuing professional development requirements for owners corporation managers.

For further information about this submission, please contact Liam Straughan, Public Relations and Media Officer, SCA (Vic). Liam.straughan@strata.community or Shaun Brockman, National Policy and Advocacy Manager, SCA. Shaun.brockman@strata.community.

SCA (Vic)'s Response to Review of the *Retirement Villages Act 1986*

Summary

Strata Community Association (Vic) has published this submission based upon a consultative process with a diversity of strata industry stakeholders, including those with experience managing retirement villages within their portfolio.

At present, retirement villages comprise an exceptionally small proportion of strata portfolios managed in Victoria, owing to the complexity of the application of strata title in this context - until 1988, most retirement villages were designated as being under strata title.

In a broader Australian context, approximately 9 per cent of Retirement Villages fall under strata or freehold title arrangements; concurrently, approximately 25 per cent of Victorians live in strata-titled properties, inclusive of retirement villages.

Accordingly, both the *Owners Corporations Act 2006* and components of the *Retirement Villages Act 1986*, respectively, govern the provision of services to Victorian retirement villages by owners corporation managers.

Accordingly, SCA (Vic) has published its feedback to Consumer Affairs Victoria (CAV) in relation to the following proposed reforms:

- **Underlying Issues & Concerns Not Addressed Within Consultation Terms of Reference**
 - **Inconsistencies Between the *Retirement Villages Act 1986* and *Owners Corporations Act 2006*:**
 - **Duties and Conflicts of Interest Applicable to Owners Corporation Managers and Retirement Village Operators**
 - ❖ Lack of Clarity if a Retirement Village Operator is Required to be a Registered Strata Manager to Allow the Raising of Fee Notices Under S38B(4)
 - **Application of Australian Accounting Standards in Retirement Villages with Unlimited and Limited Tier 1, 2 & 3 Owners Corporations**
 - ❖ Lack of Clarity of the Impact of Repealing S34(5)
 - ❖ Incorrect Statement About Entities Capable of Auditing Accounts - S34A(c)(ii)
- **Theme 1 – Stronger Dispute Resolution Pathways**
- **Theme 2 - Better Defined Maintenance Responsibilities and Obligations**
 - Introduction of Different Terms and Definitions for the Requirement of Maintenance Plans
 - Inconsistent Terminology Between Property Acts
- **Theme 3 - Better Resident Participation in Retirement Village Decision-Making**
- **Theme 4 - New Emergency and Evacuation Planning Requirements**
- **SCA (Vic) Recommendations**

Underlying Issues & Concerns Not Addressed Within Consultation Terms of Reference

Inconsistencies Between the *Retirement Villages Act 1986* and *Owners Corporations Act 2006*:

The exposure draft of the bill concerning proposed changes to the *Retirement Villages Act 1986* in its current form, in SCA (Vic)'s view, fails to sufficiently address several areas wherein this legislation conflicts with, or leaves ambiguities as to its degree of deference to the *Owners Corporations Act 2006*.

Conflict exists between both pieces of legislation where owners corporations exist within retirement villages, and greater reconciliation is required in order to harmonise these, through addressing the issues outlined below.

Alternatively, if aforementioned reconciliation of these acts is not feasible, retirement villages wherein an owners corporation/s structure is present, should be granted an exemption to the proposed provisions, or the *Retirement Villages Act 1986* in its entirety.

Duties and Conflicts of Interest Applicable to Owners Corporations (OCs), OC Managers & Retirement Village Operators

Under the *Retirement Villages Act 1986*, **two tiers of retirement village effectively exist - those designated under strata title** (owing to the previous creation of an owners corporation/s via application with the original plan of subdivision, or after registration of the plan with Land Use Victoria), **and those not specifically defined in this capacity.**

According to these parameters, Tier 1 (>100 occupiable lots), Tier 2 (51-100 occupiable lots) and Tier 3 (10-50 occupiable lots) owners corporations in a retirement village are subject to relevant obligations as ordinarily defined under the *Owners Corporations Act 2006*, such as preparation and approval of maintenance plans and funds, and annual financial statements in accordance with Australian Accounting Standards.

Lack of Clarity if a Retirement Village Operator is Required to be a Registered Strata Manager to Allow the Raising of Fee Notices Under S38B(4)

Yet, with owners corporations in retirement villages designated under remaining tiers, the exposure draft of the bill transfers duties ordinarily applicable to managers, to the operator of the retirement village, despite no equivalent requirement for the operator to register in an equivalent capacity, or as an owners corporation manager outright to carry out said duties, including the issuing of fee notices, as per Section 38B(4) of the exposure draft.

Section 122 of the *Owners Corporations Act 2006* outlines and governs owners corporation managers in terms of duties, as well as conflicts of interest – the exposure draft does not make clear at all as to whether or not this extends to operators of retirement villages.

Application of Australian Accounting Standards in Retirement Villages With Unlimited and Limited Tier 1, 2 & 3 Owners Corporations

Lack of Clarity of the Impact of Repealing S34(5)

Reforms introduced in 2021 to the *Owners Corporations Act 2006* have created ambiguity concerning the definition of a reporting entity under Australian Accounting Standards, and where owners corporations fit within this definition.

Clarification is needed as to whether a retirement village is now considered a reporting entity under Australian Accounting Standards – if this is already the case, this will have no immediate impact on the retirement village.

However, **this would likely have implications for the *Owners Corporations Act 2006* concerning application of these standards where other owners corporations may be affected.**

At the time of writing, no further clarity has yet been provided by relevant regulatory authorities or the Australian Accounting Standards Board (AASB) as to the reporting status of owners corporations under Australian Accounting Standards following Special purpose Reporting being phased out.

If the reporting requirements are not clarified, owners in strata titled properties will face higher management fees than those owning in other Retirement Villages as financial management accounts will be required to be compiled by Charter Accountant, prior to Audit, to meet the Australian Accounting Standards.

Further, strata titled owners will be presented with accounts from Retirement Village Operators who may not require reporting to Australian Accounting Standards and cause further confusion to the owner.

Incorrect Statement About Entities Capable of Auditing Accounts - S34A(c)(ii)

Furthermore, auditing requirements contained in the exposure draft, reflective of identical provisions contained in the *Owners Corporations Act 2006*, also stipulate that this must be conducted by an 'authorised person' as designated by Chartered Accountants Australia & New Zealand (CAANZ) – CAANZ does not possess an authorisation capacity.

Theme 1 - Stronger Dispute Resolution Pathways

Q2. Are the pathways and processes for dispute resolution appropriate and clear? Are any changes needed to what is proposed?

The proposed implementation of the Chief Dispute Resolution Officer (CDRO) structure to oversee disputes specific to retirement villages is broadly supported by SCA (Vic), pending clarification of information concerning:

- How the possibility of repeat referrals of resident disputes between the CDRO and VCAT will be avoided under the proposed framework;
- The proposed remit of the CDRO to conduct dispute resolution in cases specifically concerning the interpretation of the *Owners Corporations Act 2006*, where this may apply in a retirement village setting, and
- How Schedule 2 of the *Owners Corporations Regulations 2018* Model Rule 7, or other dispute resolution measures contained in any registered rules of the owners corporation will be impacted by the proposed CDRO model.

Theme 2 - Better Defined Maintenance Responsibilities and Obligations

Q6. Are the changes relating to capital maintenance obligations for operators and residents helpful in clarifying roles and responsibilities in villages? If not, what refinements could be made?

Introduction of Different Terms and Definitions for the Requirement of Maintenance Plans

Further clarification is required as to whether the proposed capital maintenance plan is equivalent to a maintenance plan as required under the *Owners Corporations Act 2006*, or whether this is a standalone requirement specific to retirement villages.

Inconsistent Terminology Between Property Acts

Urgent repairs are already defined in the context of the *Residential Tenancies Act 1997* and should also subsequently be included in the *Retirement Villages Act 1986* under proposed amendments, and as part of a broader effort to better align property law terminology concerning prescribed items.

Theme 3 - Better Resident Participation in Retirement Village Decision-Making

Q8. Will the changes to residents committees, residents meetings, and annual meetings make it easier for residents to participate in, and contribute to, their retirement village?

S34(5) of the *Retirement Villages Act* clarifies that proceedings at annual meetings exist in conjunction with requirements present in the *Owners Corporations Act 2006* - the proposed amendment under item 37(6) appears to have repealed that the proceedings of the annual meeting to be conducted in accordance with the *Owners Corporations Act 2006*.

Further clarity is required to understand notice periods for convening an annual meeting of a residents, as those proposed differ from the requirements for an owners corporation.

Specifically, clarification is required as to whether it is intended that two separate annual meetings are to occur due to the aforementioned discrepancy.

Theme 4 - New Emergency and Evacuation Planning Requirements

Q10. Do the proposed emergency and evacuation planning requirements appropriately address risks to resident and staff safety?

Establishment of a mandatory emergency and evacuation plan applicable to retirement villages, where no similar obligation exists for other owners corporations governing other properties and premises, creates an effective dual tier system in Victoria concerning emergency planning and response protocols applicable to strata.

Clarification of roles for the operator, first responders and that of local councils and/or municipalities as per the [Emergency Management Act 2013](#) also requires clarification and included in conjunction with S33A(4).

This should be addressed and made consistent within the *Owners Corporations Act 2006* through future legislative review of the *Owners Corporations and Other Acts Amendment Act 2021*, and/or regulatory review of the *Owners Corporations Regulations 2018*.

SCA (Vic) Recommendations

- Equivalent registration criteria for retirement village operators where they are responsible for carrying out duties ordinarily applicable to owners corporation managers, in a retirement village setting.
- Minimum standards of education for both the registered proprietor of Retirement Villages and Owners Corporation Managers, respectively.
- Clarification of whether retirement villages are classed as reporting entities under current Australian Accounting Standards (AAS).
- Revision of standards to remove CAANZ authorisation requirements, given this capacity does not currently exist.
- Alignment of property law terminology concerning prescribed items, with specific reference to the definition of 'urgent repairs,' as per the *Residential Tenancies Act 1997*.
- Clarification of the definition of a 'capital maintenance plan,' and whether this is equivalent to a maintenance plan, as per the *Owners Corporations Act 2006*.
- Clarification of proposed notice period and annual meeting requirements specific to an owners corporation in a retirement village.
- Harmonisation of mandatory emergency and evacuation planning to be made applicable under the *Retirement Villages Act 1986* and *Owners Corporations Act 2006*, respectively.
- Clarification of roles for the operator, first responders and that of local councils and/or municipalities as per the [Emergency Management Act 2013](#), in conjunction with conditions outlined in S33A(4).

OR

- Exemption to proposed amendments, or the entirety of the *Retirement Villages Act 1986* granted to retirement villages where an owners corporation structure is present.

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