



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

OWNERS CORPORATIONS & OTHER ACTS
AMENDMENT BILL

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ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are members of the REIV. These members are located in city, rural and regional areas.

REIV member agencies employ more than 10,000 people in Victoria in a market which handles over \$100 billion of transactions totalling 30 per cent of GSP.

Members specialise in all facets of real estate, including: residential sales, commercial and industrial sales, auctions, business broking, buyers agency, property management, owners' corporations management and valuations.

Introduction

The REIV is the peak professional association for the real estate industry in Victoria, representing the majority of the state's licensed estate agents and owners corporation managers.

This draft legislation is of significant importance to our members who manage a considerable proportion of Victoria's owners corporations.

As owners corporations in this state currently manage property worth in excess of \$300 billion with annual transactions of more than \$1 billion, the REIV considers it imperative that a licensing scheme is introduced for those operating in this sector.

While more than 1.5 million Victorians are currently affected by owners corporation legislation, increased densification across the city will see this number increase significantly in the coming years.

REIV Response

The following outcomes were gained from consultation with members of our Owners Corporation Chapter Committee.

Owners Corporations & Other Acts Amendment Bill

The REIV supports the majority of the reforms outlined in the draft Owners Corporations and Other Acts Amendment Bill, however the absence of a licensing scheme is a glaring omission that is out of step with qualifications for other real estate specialisations. With around \$300 billion dollars' worth of real estate under management, owners corporation managers control static funds of significant size. In the interest of consumer protection, it is vital that those operating in this sector have a sound understanding of the relevant legislation as well as the basics of trust account management. A licensing scheme is essential to achieving those outcomes. The introduction of a licensing regime will attract higher quality individuals to the sector, improve discipline within the industry as well as reduce defalcations and mismanagement of owners corporation funds.

Feedback from REIV members also indicates that the current minimum professional indemnity insurance cover for owners corporation managers (\$1.5 million) is woefully inadequate. Given that the failure to appropriately insure buildings poses significant risks to consumers, the REIV urges Government to increase the minimum professional indemnity insurance to at least \$5 million.

While the Institute supports replacing prescribed owners corporations with a four-tiered system, the definition of a 'services only owners' corporation' (Clause 3(1)(i)) needs amending. The existing definition currently includes any owners corporation that has no land or building that is designated as common property but does have common supply or service for discharge such as sewerage and water, but is not metered. These are quite common. The REIV suggests the following wording:

(i) That has no land or building that is designated as the common property **OR**

In addition, feedback from REIV members suggests the Owners Corporations and Other Acts Amendment Bill 2018 should mandate public liability insurance for common property in two-lot subdivisions.

The last word of Clause 21 of the amending Bill, which relates to extraordinary payments from maintenance fund,

should read plan rather than fund.

As temporarily abandoned motor vehicles are a frequent issue within owners corporations, the REIV would like Clause 26 of the amending Bill to be extended to allow for the removal of motor vehicles or other items that impede fair and reasonable access to common property or other lots (i.e. parking lots).

The REIV also considers it necessary to clarify Clause 29 of the amending Bill, as to whether Section 61(3) restricts the unlimited owners corporation from insuring all buildings if some are separate buildings. Feedback from REIV members indicates that each limited owners corporation should be able to resolve to jointly insure, if they so choose.

In the proposed new Section 67A (Clause 32), the REIV would like to have any disclosure at the first meeting be minuted in writing. As such, the Institute suggests the words 'and minute in written form' be included after the word 'disclose' in Section 67A.

Feedback from REIV members indicates that the proposed Section 87 (Clause 37), which states that there is to be one vote for each lot even when the resolution is voted on by ballot, is in conflict with existing Sections 95 and 96. Sections 95 and 96 confirm that a ballot is conducted by lot entitlement. The REIV suggests replacing the proposed Section 87 with the following:

"87 Voting

For any resolution of an owners corporation at a meeting, there is to be one vote for each lot. For any resolution of an owners corporation by ballot, voting is based on one vote for each unit of entitlement."

The Institute welcomes greater control and restrictions over proxies; however Section 89E, which restricts the number of lot owners on behalf of whom a proxy may vote on a resolution, should include an exemption for family members. This provision could replicate similar provisions for powers of attorney (Section 89F(3)).

In addition, the REIV considers it important that this Bill clarifies whether committee members can attend a meeting by proxy. At present, Section 89C (1)(c) permits proxies to represent the lot owner on a committee of the

owners corporation, however, Section 112(4) omits by proxy when listing ways committee members can participate in a meeting. The REIV is strongly of the view that committee members should not be able to attend by proxy.

Feedback from REIV members also suggests that the proposed new Section 103(1A), which provides for committees to resolve to have more than seven members, be decided by the owners corporation rather than the committee. As such, Section 103(1A) should read "Despite subsection (1), the owners corporation may, by ordinary resolution, resolve that the committee may have more than 7 members but not more than 12 members."

Section 103(7) restricts a lot owner who is un-financial, namely, the proxy for that owner being able to vote. However, it's important that this provision also prohibits un-financial lot owners from holding proxies for financial lots. These lot owners are trying to avoid the consequences of being un-financial and there are a number of instances where an individual has been able to control voting despite being significantly in arrears. This could be rectified in Section 103(7) by added the words 'or proxy for lot owner' after the word 'owner'. Alternatively, this Section would not require amendment if the proposed Section 89B (1) was revised to read "A lot owner who is in arrears for any amount owed to an owners corporation is not entitled to act as a proxy for another lot owner or vote (either in person, by ballot or by proxy) on a resolution of the owners corporation unless the amount in arrears is paid in full."

Proposed Section 119A (1)(a)(ii) stipulates that the contract of appointment of a manager cannot have a term that requires the owners corporation, before revoking the appointment of a manager, to convene a general meeting of the owners corporation. The REIV supports this change, as it allows the committee to make the decision to terminate the manager. However, Section 119A (1)(a)(ii) prevents the operation of Section 82, which allows the owners corporation to vote that certain matters should only be decided at a general meeting. The decision to terminate the manager is a significant one that many owners corporations would like to control. Section 82 also prevents the manager from pandering to the committee, rather than the general membership. The REIV suggests the words 'not withstanding Section 82' be added to Section 119A (1)(a)(ii).

The REIV also considers it necessary to clarify proposed Section 141A, which states that a lot owner is not liable for an invitee's breach if the lot owner provides the invitee with a copy of the rules of the owners corporation. Given illegal subletting, particularly short stay subletting, is increasingly

common, the REIV considers it essential that lot owners not be vicariously liable for any breaches by the occupier in instances where the rules had been supplied to the original tenant.

While the Institute supports permitting owners corporations to recover reasonable costs from lot owners (Section 165 (ca)), the effectiveness of this change may be limited given VCAT's interpretation of Section 109 of the VCAT Act. The REIV suggests clarifying that pre-litigation costs are not limited to legal costs.

Summary

The REIV welcomes reform of the Owners Corporations Act 2006 and would like to thank Consumer Affairs Victoria (CAV) for the opportunity to provide feedback. In the interests of consumer protection, the REIV strongly urges CAV to introduce a licensing scheme for owners corporation managers.

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