



A Response to

*Owners Corporations Bill*

*[Introduction Print 20/07/2006]:*

*As part of,*

The Review of the Effectiveness and Efficiency of the Subdivision Act 1988 and the Subdivision (Body Corporate) Regulations 2001 as it relates to the creation and operation of bodies corporate

By the

Institute of Body Corporate Managers (Victoria) Inc.

**July 2006**

**About Institute of Body Corporate Managers (Victoria) Inc. - "...the voice of the body corporate industry..."**

IBCMV is the pre-eminent professional association of the body corporate industry, and was formed in 1990 to provide a forum for improved standards and education in the industry. Supporting more than 75% of all body corporate management firms it is the only organisation solely focussed upon representing this increasingly significant industry, and reaches and represents 250 body corporate professionals who manage approximately 200,000 lots. It also represents industry suppliers and bodies corporate, making it the voice of all with an interest in the management of bodies corporate. Members benefit from representation, promotion, establishment of professional practice guidelines and ethical standards, and professional development through education seminars, conferences and regularly publishing bulletins on items of professional interest. IBCMV is an affiliate member of the National Community Titles Institute, which represents practitioners throughout Australia. More information about the Institutes are available at [www.bodycorp.org](http://www.bodycorp.org) and [www.ncti.org.au](http://www.ncti.org.au)

**About the bodies corporate or strata title industry in Victoria.**

Changing lifestyle choices of Victorians and demographic shifts have led to rapid growth in higher density dwellings and the strata industry. With 65,000 Bodies Corporate and 500,000 lots in Victoria and about 1,000,000 Victorians or 1 in 4 people living in or affected by Bodies Corporate, it represents the management of property worth \$45 billion and they comprise residential properties ranging from 2 units in a suburban street to many hundreds of units in an urban tower block. Bodies Corporate also encompass commercial, retail, lifestyle resorts, retirement villages, car parks, storage facilities, industrial and, increasingly, mixed developments comprising more than one form of development.

Strata and Community Title Managers deal with:

- The management of people in a community living environment
- Manage billions of dollars of other peoples money on an on-going and not a single transaction basis
- Manage entire communities and their current and future assets and facilities

## Introduction

The peak representative body of the body corporate industry, the Institute of Body Corporate Managers (Victoria) Inc., previously welcomed the outcomes of the government's review of body corporate legislation – the *Review of the Effectiveness and Efficiency of the Subdivision Act 1988 and the Subdivision (Body Corporate) Regulations 2001* as it relates to the creation and operation of bodies corporate

It is gratifying to see the adoption of most of the IBCMV "industry position" recommendations in one form or another. Though the IBCMV is in agreement with most elements of the Owners Corporations Bill as introduced into Parliament, there are still some areas identified for change in this submission.

**Important note:** The issues addressed in this submission are the only issues. Where this submission is silent, it means that the IBCMV is in agreement and has no need to give comment on those aspects.

## Overarching purpose

The second reading speech of The Honourable Rob Hulls identifies

*"The primary challenge for the government in reforming the law in this area is to keep regulation to the minimum necessary to guide and support the operations of bodies corporate, while at the same time keeping pace with the increasingly complex and sophisticated body corporate environment."*

In isolation this is true and laudable, but it ignores the much needed systemic reform through greater national harmonisation of laws, which is required to address overlaps and inconsistencies between various state jurisdictions.

As ever more business activity occurs on a national scale, there is an increasingly compelling case for introducing uniform regulation across Australian jurisdictions. IBCMV as per its previous submission calls for the need for COAG to further harmonise strata and community title laws in Australia with two key pre-condition initiatives:

- a. *A national coordinating body, such as a Ministerial Council*
- b. *A Strata Reform Commission*

January 2006 saw the release of the Australian government Regulation Taskforce report *Rethinking Regulation – Report of the Taskforce on Reducing Regulatory Burdens on Business*. In April 2006 the Australian Government's interim response to Recommendation 4.44 was to ask for the Productivity Commission to undertake over the next 12 months an inquiry into the consumer policy framework with a view to promoting greater national consistency and reducing unnecessary regulatory burden. IBCMV [Victorian body] and/or the NCTI [National body] will look to make a submission as part of this process.

## EXECUTIVE SUMMARY

The body of this submission contains the detailed recommendations for all changes required, but an overview of the main priority areas identified for change includes:

1. Sections of this Owners Corporations Bill fail to properly recognise that managers perform much of the role of the secretary of the owners corporation and chairperson of general meetings. Part of the role of the manager is to conduct the meetings and act as secretary of the owners corporation. This was recognised back in the 1989 regulatory framework whereby if a manager is appointed then the manager becomes the secretary. This is essential to allow for the proper and effective conduct of meetings and proxies/ballots.  
It does not make any sense that the manager sends out the ballots and proxies but cannot receive them, even if it is the wish of the owners corporation.  
The proposed introduction of office-holders provides that the manager cannot be the chairperson or the secretary; and this fails to recognise the role of managers.  
The requirement for the secretary of the committee to keep minutes of committee meetings, and that a member of the owners corporation may inspect the committee meeting minutes, reinforces these issues – how many lot owners who are secretary of their owners corporation would want their home to be open for inspection of the committee meeting minutes when any member requests to see them?  
The proposed requirement for the chairperson of the owners corporation to chair the general meeting is not a good change. Generally, owners are not equipped to effectively chair owners corporation meetings as they do not have the required knowledge of the legislation and skill. This Bill needs to allow for an owners corporation to elect who it wants to chair the meeting. Current practice, where an owners corporation has a manager, is that the manager chairs about 99.9% of owners corporation meetings. For this practice to continue, there are sufficient protection provisions in this Bill through the inclusion of conduct principles for managers [must act honestly and in good faith, exercise due care and diligence, and not make improper use of position to gain an advantage] and dispute resolution mechanisms.
2. Excessive burden of Keeping of Records and the Owners Corporation Register –  
People inspecting files need to be supervised to ensure nothing happens to the file; and this supervision requires a reasonable fee to be able to be charged. If it is not allowed for managers to charge under a user pays system, greater costs will result by the manager trying to recoup the extra resource demands.  
Inspection should not be allowed at any time; rather it must be made by appointment within a reasonable time. Further, the substitution of “between 9 a.m. and 5 p.m. on a weekday and at any other reasonable time” to now be merely “at any reasonable time” makes it even worse. Is this change to be read that “at any reasonable time” now includes night times on weekdays and any time day or night on weekends?  
There are extensive privacy issues with allowing inspection of all records due to conflict with issues in privacy legislation.  
The Owners Corporation Register is an onerous duplication and overlap of other records required to be kept. This does not add anything further to disclosure, and will only result in increased costs to owners corporations.  
It must be recognised that with the improved consumer protection provisions [eg free inspections of records and the new owners corporation register, etc] will be a correspondingly considerable impost on owners corporation managers that will inevitably be passed on to lot owners. In general terms, IBCMV believes the increased complexity of the legislative framework will result in significantly increased management fees.
3. Regarding the registration of managers, IBCMV strongly recommends qualification based registration of managers. That is, tying registration of a manager to having an educational qualification. Given the mapping of consumer risk areas in the completed Victorian Implementation Guide, it is recommended this qualification be the Strata and Community Title Management industry’s Certificate IV within the PODS training package. *Refer to Appendix* for complete analysis.  
This is inherently required to improve skills, mobility and training in an industry with massive looming staff shortages. *Refer previous submission “Reducing the compliance burden from registration of managers”.*

4. Register of Managers -  
Clause 193 [d] should be deleted because it is not one of the purposes of the Register of Managers intended as per the Final Report, it is not relevant and also because it allows for the release of sensitive commercial information of customers of managers. A register of who manages what owners corporations has far reaching implications for a managers business if the client base of a manager is accessible by others. What other industry has to supply a list of their client base?
5. Given the recognition via the defining of “prescribed owners corporation” of differing owners corporations being treated differently in some aspects, it is further recommended that the *management* of differing owners corporations also needs to be differentiated. Professional owners corporation managers play a vital role in an increasingly complex environment by ensuring owners corporations are compliant with their legal responsibilities, efficiently and effectively protect and maintain the owners’ assets and plan for the future. It is recommended that if an owners corporation has certain characteristics then the owners corporation be *required* to appoint a professional manager. Thus, it is mandatory for the owners corporation to appoint a manager in some circumstances.
6. Manager must return all records/funds within 28 days after termination of appointment -  
This section needs a lien that contractual terms need to have been met, as per the IBCMV Management Agreement [which covers where the owners corporation owes money to the manager]. Similarly to a solicitor’s lien, with the ability to retain files.  
Otherwise, this makes it a severe offence for a manager to fail to all records relating to the owners corporation or its funds within 28 days of ceasing to act as manager, with a penalty of up to \$6,288.60, even when the owners corporation has outstanding monies owed to the manager. Where is the fairness in this? There is no issue with penalties or their quantum relating to managers where a person deliberately acts as manager without being registered or supplies false or misleading information to the BLA, but clearly this Clause currently is grossly inequitable.
7. Penalties -  
The VCAT penalty for breach of rules is the only penalty relating to owners, though we have recommended others throughout this submission. In the exposure draft of December 2005 it was “2 penalty units” and now it is “\$250”. This removes indexation and will not keep pace over time. This is the only penalty now stated in monetary terms; all others are expressed in “penalty units”. This penalty should also be reverted back to be consistently expressed as “2 penalty units”.  
If manager doesn’t notify material changes to annual statement within 14 days after the person becomes aware of the changes, the penalty for this offence is 10 penalty units, which has changed from 25 penalty units in the exposure draft of December 2005. We concur with the reduction, but believe it has not decreased enough. Still at over \$1,000 for what is a relatively minor offence that may not be deliberate but merely the result of an oversight or delay. Change to 5 penalty units.
8. Owners Corporation Certificate –  
IBCMV is pleased with the adoption of its previous advice that the Form 3 Body Corporate Certificate should become part of the Section 32 documentation provided as part of the purchase process. Further, though, IBCMV reaffirms its previous submission to allow for a commensurate increase in the fee chargeable by owners corporation managers for the preparation of owners corporation certificates to \$165 including GST. Also, this fee, expressed in 2006 dollars should be indexed annually to reflect CPI increases. This fee would recognise the increased work and costs associated with preparing an important and legal document together with the fact that the existing \$55 has stood since 1989 and does not reflect inevitable increases in operating costs experienced by owners corporation management firms during the previous fifteen years. Further, that the new owners corporation certificate is more onerous even than the current Form 3 Body Corporate Certificate, and also requires other documents to accompany the owners corporation certificate.  
*Comparison to other property certificates*  
Caution must be exercised when price comparisons are made with other property certificates. For example, unlike other property certificates the Form 3 Body Corporate Certificate includes *contingent liabilities* at Question 8. This takes time and manual intervention and is not an automated electronic process.

*Implications if the recommendation to increase the fee is not adopted*

If the fee is too low such that only part of the manager's cost for the work involved can be recovered, then the management agreement would be changed so that the remaining portion [after the applicant's fee has been paid] would be charged back to the owners corporation.

9. There would need to be a discrete owners corporation List at VCAT. It requires its own application form, practice note and procedures. It is important that members of such a list have appropriate experience in owners corporation issues. Also, is legal representation allowed?
10. Ultimate responsibility should remain with the owner – not the occupier.  
The *Duties of occupiers of lots* at Clause 137 is a regression that places the obligation of rules of the owners corporation on to the occupier [as per pre 2001 laws] but this should still be the responsibility of the owner. There is no contractual nor proprietary relationship between the owners corporation and occupiers. From a manager's perspective, if there is a poor tenant, where does the manager go to pursue this? Is this expecting the manager to now be involved in residential tenancies?  
Similarly, at *Who is bound by the rules* at Clause 141, IBCMV agrees that yes, [sub-] lessees and occupiers should be bound by the rules, but ultimately the owners should be responsible.
11. Application of the Fair Trading Act 1999 -  
Now provides for various provisions of the Fair Trading Act 1999 to extend and apply (with any necessary modifications) to paid managers under this Part. These include the inspection powers (apart from those excepted) set out under Part 10 of the Fair Trading Act 1999, the Director's power to obtain information and documents to assist in monitoring compliance, as set out in section 106HA of the Fair Trading Act 1999, and some of the enforcement provisions in the Fair Trading Act 1999.  
It is noted that the provisions of the Fair Trading Act 1999 have now changed, being applicable to managers only – not to any others.  
However, a regulatory regime that includes application of the Fair Trading Act 1999 for professional "paid" [for fee or reward] or "registered" managers but that does not apply equally to the newly introduced "volunteer" managers of self-managed bodies corporate remains highly discriminatory, and may simply lead to "opting out" and self management which is likely to result in reduced levels of service and security for members.  
It must also be remembered that, given our recommendation for it to be mandatory for an owners corporation to appoint a manager in some circumstances has not yet been adopted, a \$1 billion dollar building asset with 500 lot owners and an annual budget in the millions of dollars may still be self-managed by a volunteer manager who is not subject to the application of the Fair Trading Act 1999, yet a "paid" or "registered" manager of a suburban block of 6 units with a \$10,000 budget is subject to application of the Fair Trading Act 1999.  
Also consider the new immunity given to the volunteer manager provides that any liability that would otherwise have attached to the volunteer manager attaches instead to all the owners of the owners corporation.

Thus, the same recommendation as previously is reiterated below.

The enforcement powers given to the Director in Part 12 of the Bill includes penalty units of 240 (natural person) and 600 (body corporate; which is up to approximately \$60,000). These enforcement powers are inconsistent with the internal disputes resolution process, proposed mediation/conciliation and the provisions for the enforcement of rules. The enforcement provisions under Part 12 will deter voluntary committees and self management. Managers will increasingly need to seek legal advice on matters to ensure compliance with the legislation and to avoid prosecution.

Application of the Fair Trading Act 1999 is inconsistent with the announced Government policies, Final Report and the Future Directions Paper and therefore has not had any input from stakeholders. It is inappropriate to apply criminal sanctions to private property managed by unqualified/unsupported individuals acting on committees who are managing not for profit owners corporations; or managers. An owners corporation is not permitted to undertake any business activities and does not trade with the public at large.

Provision	Issues
<b>PART 1 INTRODUCTORY</b>	
3 Definitions	Clause 3 "common property" definition should include water rights, which is an increasingly important aspect in owners corporations.
<b>PART 2—FUNCTIONS AND POWERS OF OWNERS CORPORATION</b>	
<b>Division 1—Functions and Powers of Owners Corporation</b> 4 Functions of owners corporation	Clause 4 [b] only says repair and maintain here, where in Asset Management it also includes ability to upgrade, renovate, improve. For consistency and clarity, add these here or else add another definition.
<b>Division 2—Powers Relating to Services</b> 13 Owners corporation not to carry on business	Clause 13 [2] need to delete this. Gets away from the knitting of an owners corporation; and is incongruous with [1]. A "business" is not the normal things an owners corporation does.
<b>Division 3—Powers Relating to Property</b> 16 Power to acquire and dispose of personal property	Clause 16 This Section is badly drafted. Further, Clause 16 [4] should include reference to water rights, which is an increasingly important aspect in owners corporations.
<b>Division 4—Power to Bring Legal Proceedings</b> 18 Power to bring legal proceedings	Clause 18 [1] change "special resolution" to "ordinary resolution at a general meeting". The requirement to have a special resolution is too restrictive. The power to bring legal proceedings should be able to be resolved by ordinary resolution at a general meeting.
<b>Division 5—The Common Seal</b> 20 When can the common seal be used?	Clause 20 [2][a] delete "general". That is, to include a committee meeting as well as a general meeting.
<b>PART 3—FINANCIAL MANAGEMENT</b>	
<b>Division 1—Financial Powers</b> 29 Penalty interest on arrears	Clause 29 VCAT should have the ability to impose a penalty on recalcitrant late and non payers.
<b>Division 2—Accounts and Audit</b> 33 Financial records	Clause 33 [b] after the word "true", delete "and fair view". It is superfluous. What does this mean?
<b>Division 3—Maintenance Plan</b> 37 What must a maintenance plan contain?	Clause 37 This list is not nearly as extensive as the one proposed in our previous submission <i>Maintenance Plans of March 2005</i> . Will "prescribed class" include other items such as structure, roof, walls, windows, fire services, etc? It is strenuously reiterated IBCMV recommend this should be as per the previous submission.
<b>Division 5—Asset Management</b>	

<p>49 Cost of repairs, maintenance or other work</p> <p>50 When can an owners corporation authorise a person to enter a lot?</p> <p>53 Upgrading of common property</p>	<p>Clause 49 [2] and [3] should cover work on one lot or more than one lot. Possibly change [3] by replacing “common property or a lot” with “common property, a lot, or some lots”.</p> <p>Clause 50 after “person” add “and persons”.</p> <p>Clause 53 This requires amendment. For works that are classified as an improvement, upgrading or renovation, and that cost less than 2 times the annual fees, and there’s no permit required, and they are not a significant alteration, then only an ordinary resolution should be required. Eg Installation of intercom system.</p>
<p><b>Division 6—Insurance</b></p> <p>54 What is an insurable building?</p> <p>60 Public liability insurance</p> <p>65 Valuation of buildings</p>	<p>Clause 54 definition of an insurable building – inadvertently this will extend and require insurance of many owners corporations that do not currently have to insure eg those with no common property or those with common property but which are not above or below a lot, with services does not currently require insurance, but under this proposed new bill, these would all have to insure. Is this expansion intended? Eg those where the only common property is a driveway.</p> <p>IBCMV agrees with the extension to cover services but not to cover building insurance.</p> <p>Though we still maintain, as per previous submissions, that an owners corporation should be the entity that take out insurance.</p> <p>There is still no provision for an owners corporation to differentiate lot liability for insurance depending on use of lots eg in mixed use development with commercial and residential; where the commercial aspect greatly increases the otherwise payable premium for residential.</p> <p>Clause 60 Says \$10 million, the same as current laws; except more for prescribed owners corporations. IBCMV, as per its previous submissions, recommends the amount for prescribed owners corporations should be \$20million.</p> <p>Also, any reference to “public liability” should be replaced with “legal liability” as per current practice. This is an out of date terminology.</p> <p>Clause 65 Prescribed owners corporation must obtain valuation by a registered valuer every 5 years or earlier. Thus ensuring requirement of Proposal 16 of Final Report for prescribed owners corporation having sufficient replacement and reinstatement insurance cover for building. This is as per IBCMV recommendation, though we proposed and maintain that all owners corporations must have valuations [whereas this is just for prescribed owners corporations].</p> <p>Further, as per the IBCMV endorsed management agreement it should be 3 years [for all owners corporations].</p> <p>Moreover, considering current practice of differentiations between full “site valuation” versus annual “desk valuation” [ie an indexation], we recommend the definition of valuation here be tightened as a full site valuation.</p> <p><i>General comment on Division 6 – Insurance:</i> Although it is enabled by ordinary resolution, it does not make it mandatory to take out insurance for common contents. It should be mandatory that common contents be insured. Eg carpets and artwork in foyers.</p>
<p><b>PART 4—MEETINGS AND DECISIONS OF OWNERS CORPORATION</b></p>	
<p><b>Division 1—First Meeting of Owners Corporation</b></p> <p>68 Obligations of initial owner</p>	<p>Clause 68 inadvertently this is very weak because the “initial owner” does not cover the 99% of cases where the developer has sold off and now is not the initial owner so this does not do much good. So, in Clause 4.3 [3] replace “the owner of the majority of the ” with “owns one or more”.</p> <p>IBCMV reiterates that, as per its initial submission, it should not be a “warranty budget” but a realistic running budget. This is all about disclosure.</p>

<p><b>Division 4—Procedure at General Meetings</b> 79 Who chairs the general meeting?</p>	<p>Clause 79 Chairperson, and introduction of new sub-clause [2]. This is different from current laws and it is not a good change. Generally owners are not equipped to effectively chair owners corporation meetings as they do not have the required knowledge of the legislation and skill. This Bill needs to allow for an owners corporation to elect who it wants to chair the meeting. Current practice, where an owners corporation has a manager, is that the manager chairs about 99.9% of owners corporation meetings.</p> <p><i>Refer to Point [1] in Summary.</i></p>
<p><b>Division 5—Ballots</b> 86 Resolution by ballot</p>	<p><u>Secretary of committee</u></p> <p>Clause 86 [1] There is a problem with forwarding the ballot to the secretary, as pursuant to 99 it is unclear whether there will be a secretary where there is no committee. In all cases where there is a manager it should be sent to the manager. This can be overcome by saying somewhere that the manager can be the receiving officer.</p> <p>Managers need to be able to receive things in the mail such as proxies and ballots.</p> <p>It does not make any sense that the manager sends out the ballots and proxies but cannot receive them, even if it is the wish of the owners corporation.</p> <p><i>Refer to Point [1] in Summary.</i></p>
<p><b>Division 6—Proxies and Powers of Attorney</b> 87 Proxies</p>	<p>Clause 87 [3] [d] replace “secretary” with “receiving officer” Clause 87 [3] [e] replace “secretary” with “receiving officer”</p> <p><i>Refer to Point [1] in Summary.</i></p>
<p><b>Division 7—Decisions of Owners Corporation</b> 93 Does the chairperson have a casting vote?</p>	<p>Clause 93 Replace “Does the chairperson have a casting vote?” with “Does the chairperson of the owners corporation have a casting vote?”. Similarly in subsections [1] and [2]. Rationale is that is proper for the chairperson of the owners corporation to have a casting vote, but it is not proper for a manager who is chair of the meeting to have a casting vote. Nor does a manager want to have a casting vote. The manager is the most independent and impartial party present.</p>
<p><b>Division 8— Office-holders</b> 98 Chairperson of owners corporation</p>	<p>Clause 98 This new Clause provides that the manager cannot be the chairperson. This does not properly recognise the role of managers.</p> <p><i>Refer to Point [1] in Summary.</i></p>
<p>99 Secretary</p>	<p>Clause 99 This new Clause provides that the manager cannot be the secretary. This does not properly recognise the role of managers.</p> <p>Clause 99 [2] the requirement that the secretary of the committee is also the secretary of the owners corporation is unnecessary and should be deleted.</p> <p>Clause 114 requires the secretary of the committee to keep minutes of committee meetings. The newly introduced sub-clause 114 [4] states that a member of the owners corporation may inspect the committee meeting minutes. This reinforces the issues with Clause 99 noted above – how many lot owners who are secretary of their owners corporation would want their home to be open for inspection of the committee meeting minutes when any member requests to see them?</p> <p><i>Refer similarly to recommendations for secretary at Clause 86 and Clause 87 and the role of the manager at Point [1] in Summary.</i></p>

**PART 5—COMMITTEES**  
**PART 6—MANAGERS**

119 Appointment and removal of manager

Clause 119 The definition of “prescribed owners corporation” means an owners corporation of a class prescribed by the regulations, and is intended to provide a flexible mechanism for specific regulation of additional requirements [eg standards of accounting for financial statements, auditing of accounts, maintenance plans, minimum public liability insurance cover, valuations to enable sufficient replacement and reinstatement insurance cover for building] for certain classes of owners corporations.

**Given this recognition via the defining of “prescribed owners corporation” of differing owners corporations being treated differently in some aspects, it is further recommended that the management of differing owners corporations also needs to be differentiated.**

Professional owners corporation managers play a vital role in an increasingly complex environment by ensuring owners corporations are compliant with their legal responsibilities, efficiently and effectively protect and maintain the owners’ assets and plan for the future.

Two key trends are evident and growing, namely:

- the level of investment in properties subject to owners corporations is significant and increasing [\$45 billion worth of property – approx 7% of the total value of property in Victoria]]
- the significant number of properties with a large number of lots and complex services, such as can be found in high rise or mixed use developments.

Both trends make the self management of properties extremely problematic and pose significant risks for owners who may not be informed of the complexities associated with the management of their common properties.

As per the recommendation of the IBCMV submission *Response to Future Directions* of May 2004, **it is recommended that: if an owners corporation has any one of the following characteristics then the owners corporation be required to appoint a professional manager. Thus, it is mandatory for the owners corporation to appoint a manager in these circumstances.**

- By size – as determined by number of lots in the owners corporation  
The owners corporation has 8 lots or more

Or,

- By size – as determined by annual receipts of the owners corporation  
if the gross annual receipts of the owners corporation exceeds \$200,000.

NB: this is the same threshold as for the two different levels of reporting under the Associations Incorporation Act 1981 and the interim report of the current review of this Act [which notes that annual receipts greater than \$200,000 warrants the additional requirements such as auditing]

Or,

- By value of the lots  
if at the time of the initial development and sale, the median value of the lots is 150% of the median Victorian house price

Or,

- For multiple owners corporations  
If there is more than one owners corporation established within an integrated development

Or,

- By use  
if the owners corporation has multi-use lots

<p>127 Manager to return records</p>	<p>Or,  o By height – as determined by number of storeys if the owners corporation property is more than four floors in height</p> <p>Thus, it is recommended that in Part 6 – Managers, Clause 119 Appointment and removal of manager, be amended to suit.</p> <p>Clause 127 Manager must return all records/funds within 28 days after termination of appointment. Penalty 60 units [as per the Sentencing Act and Monetary Units Act, with the current factor published in Victorian Government Gazette of \$104.81, this equates to a penalty of \$6,288.60]. This section needs a lien that contractual terms need to have been met, as per the IBCMV Management Agreement [which covers where the owners corporation owes money to the manager]. Similarly to a solicitor’s lien, with the ability to retain files.</p> <p>Otherwise, this makes it a severe offence for a manager to fail to all records relating to the owners corporation or its funds within 28 days of ceasing to act as manager, with a penalty of up to \$6,288.60, <b>even when the owners corporation has outstanding monies owed to the manager</b>. Where is the fairness in this?</p> <p>There is no issue with penalties or their quantum relating to managers where a person deliberately acts as manager without being registered [Clause 178] or supplies false or misleading information to the BLA [Clause 189], but clearly this Clause currently is grossly inequitable.</p>
<p><b>PART 7—DUTIES AND RIGHTS OF LOT OWNERS AND OCCUPIERS</b></p>	
<p>134 Address of new owners</p>	<p>Clause 134 Penalties should be applied to both vendor and purchaser if they do not comply.</p>
<p>135 Address of absent owners</p>	<p>Clause 135 Penalties should be applied to these if they do not comply.</p>
<p>136 Advice to occupiers</p>	<p>Clause 136 Penalties should be applied to these if they do not comply.</p>
<p>137 Duties of occupiers of lots</p>	<p>Clause 137 This regression places the obligation of rules of the owners corporation on to the occupier [as per pre 2001 laws] but this should still be the responsibility of the owner. There is no contractual nor proprietary relationship between the owners corporation and occupiers.</p> <p>From a manager’s perspective, if there is a poor tenant, where does the manager go to pursue this? Is this expecting the manager to now be involved in residential tenancies?</p>
<p><b>PART 8—RULES OF THE OWNERS CORPORATION</b></p>	
<p>139 Model rules</p>	<p>Clause 139 [2] versus Clause 139 [3]. Clarification is needed here whether model rules may be changed or whether they can only be added to.</p> <p>Clause 139 Model Rules should not apply by default, they should be optional only.</p>
<p>141 Who is bound by the rules?</p>	<p>Clause 139 If Model Rules must apply to every type of use of all owners corporation, then perhaps consider differing Model Rules for residential for commercial, industrial, high-rise, multi-use, etc</p> <p>Clause 141 IBCMV agrees that yes, [c] and [d] should also be bound by the rules, but ultimately the owner should be responsible. Refer comments at Clause 137.</p>
<p>142 Recording of rules</p>	<p>Clause 142 [1] and [2] Add “or manager” after “secretary”. Refer to Point [1] in Summary.</p>

PART 9—RECORDS	
<p><b>Division 1—Keeping of Records</b></p> <p>146 Availability of records</p>	<p>Clause 146</p> <p>People inspecting files need to be supervised to ensure nothing happens to the file; and this supervision requires a reasonable fee to be able to be charged. In support of this, according to 195 - Inspection of register of managers, a payment of a prescribed fee may be required to inspect the register. Likewise, managers need to be compensated for the extra demand on resources.</p> <p>If it is not allowed for managers to charge under a user pays system, greater costs will result by the manager trying to recoup the extra resource demands.</p> <p>Inspection should not be allowed at any time; rather it must be made by appointment within a reasonable time.</p> <p>Further, the substitution in sub-clause [1] of "between 9 a.m. and 5 p.m. on a weekday and at any other reasonable time" to now be merely "at any reasonable time" makes it even worse. Is this change to be read that "at any reasonable time" now includes night times on weekdays and any time day or night on weekends?</p> <p>There are extensive privacy issues with allowing inspection of all records [including for example correspondence], especially by anyone including purchasers. In 144 there are some items that it is believed should not be made available for inspection due to conflict with issues in privacy legislation. These include [n], [o], [p] and some parts of [j] because some accounting records should not be made available [should be as per 33 and 34 only, not other accounting records such as receivables].</p> <p>Replace "free of charge" with "at no charge to the applicant".</p> <p><b>It must be recognised that with the improved consumer protection provisions [eg free inspections of records and the new owners corporation register, etc] will be a correspondingly considerable impost on owners corporation managers that will inevitably be passed on to lot owners.</b></p> <p><b>In general terms, IBCMV believes the increased complexity of the legislative framework will result in significantly increased management fees.</b></p>
<p><b>Division 2—Owners Corporation Register</b></p> <p>148 What must be kept on the owners corporation register?</p> <p>149 In what form must the register be kept?</p> <p>150 Availability of register</p>	<p>Clause 148 This register is an onerous duplication and overlap of other records required to be kept. This does not add anything further to disclosure, and will only result in increased costs to owners corporations.</p> <p>Clause 149 Is this necessary?</p> <p>Clause 150 has the same issues as Clause 146</p> <p>People inspecting the owners corporation register need to be supervised to ensure nothing happens to the owners corporation register; and this supervision requires a reasonable fee to be able to be charged.</p> <p>In support of this, according to Clause 195 - Inspection of register of managers, a payment of a prescribed fee may be required to inspect the register. Likewise, managers need to be compensated for the extra demand on resources.</p> <p>If it is not allowed for managers to charge under a user pays system, greater costs will result by manager trying to recoup the extra resource demands.</p> <p>Inspection should not be allowed at any time; rather it must be made by appointment within a reasonable time.</p> <p>Further, the substitution in sub-clause [1] of "between 9 a.m. and 5 p.m. on a weekday and at any other reasonable time" to now be merely "at any reasonable time" makes it even worse. Is this change to be read that "at any reasonable time" now includes night times on weekdays and any time day or night on weekends?</p>

	<p>Notwithstanding our objection to the owners corporation register as per Clause 150 above, Clause 148 [j] needs some clarification. What is a “contract”? Contracts with plumbers? Tax invoices?</p> <p>Replace “free of charge” with “at no charge to the applicant”.</p> <p><b>It must also be recognised that with the improved consumer protection provisions [eg free inspections of records and the new owners corporation register, etc] will be a correspondingly considerable impost on owners corporation managers that will inevitably be passed on to lot owners.</b></p> <p><b>In general terms, IBCMV believes the increased complexity of the legislative framework will result in significantly increased management fees.</b></p>
<p><b>Division 3—Owners Corporation Certificate</b> 151 Owners corporation certificate</p>	<p>Clause 151 IBCMV is pleased with the adoption of its previous advice that the Form 3 Body Corporate Certificate should become part of the Section 32 documentation provided as part of the purchase process.</p> <p>Further, though, IBCMV reaffirms its previous submission for a change to allow for a commensurate increase in the fee chargeable by owners corporation managers for the preparation of owners corporation certificates to \$165 including GST. Also, this fee, expressed in 2006 dollars should be indexed annually to reflect CPI increases.</p> <p>This fee would recognise the increased work and costs associated with preparing an important and legal document together with the fact that the existing \$55 has stood since 1989 and does not reflect inevitable increases in operating costs experienced by owners corporation management firms during the previous fifteen years. Further, that the new owners corporation certificate is more onerous even than the current Form 3 Body Corporate Certificate, and also requires other documents to accompany the owners corporation certificate.</p> <p><i>Comparison to other property certificates</i> Caution must be exercised when price comparisons are made with other property certificates. For example, unlike other property certificates the Form 3 Body Corporate Certificate includes <i>contingent liabilities</i> at Question 8. This takes time and manual intervention and is not an automated electronic process.</p> <p><i>Implications if the recommendation to increase the fee is not adopted</i> If the fee is too low such that only part of the manager’s cost for the work involved can be recovered, then the management agreement would be changed so that the remaining portion [after the applicant’s fee has been paid] would be charged back to the owners corporation.</p> <p>Clause 151 [4] [vii] Again, what is a “contract” and “agreement”?</p>
<p><b>PART 10—DISPUTE RESOLUTION</b></p>	
<p><b>Division 1—Complaints and Procedures</b> 153 Decision whether to take action in respect of alleged breach  159 Report to annual general meeting</p>	<p>Clause 153 [1] [b] This is superfluous. Delete [b] and thus it follows also that Clause 153 [1] [a] is unnecessary also. If a complaint is made it is dealt with, and a person cannot be expected to have intuitive knowledge where there is no complaint.</p> <p>Clause 159 [2] It is impossible in practical terms to report on a complaint without identifying either party. This is related back to the same issues raised at Clause 146 regarding availability of records. There is an inherent conflict between keeping accurate records and complying with the Privacy Act.</p>

<p><b>Division 2—Powers of Director</b> 161 Conciliation and mediation</p>	<p>Clause 161 Conciliation and mediation requires a mediator that is skilled and knowledgeable in owners corporation issues.</p> <p>Clause 161 [1] This is poorly drafted. How does the Director assess whether a dispute is “reasonably likely to be settled”. Rework as Director “may” refer a dispute to conciliation and mediation.</p>
<p><b>PART 11—APPLICATIONS TO VCAT</b></p>	
<p><b>Division 1—Owners Corporation Disputes</b>  166 Penalty for breach of rules</p>	<p><i>General comment regarding VCAT:</i> There would need to be a discrete owners corporation List at VCAT. It requires its own application form, practice note and procedures. It is important that members of such a list have appropriate experience in owners corporation issues.</p> <p>Is legal representation allowed?</p> <p>Clause 166 This is the only penalty relating to owners, though we have recommended others throughout this submission. This VCAT penalty for breach of rules was, in the exposure draft of December 2005, “2 penalty units”. Now it is “\$250”. This removes indexation and will not keep pace over time. This is the only penalty now stated in monetary terms; all others are expressed in “penalty units”. This penalty should also be reverted back to be consistently expressed as “2 penalty units”.</p>
<p><b>Division 4—Appointment of Administrator</b> 173 Application for appointment of administrator</p>	<p>Clause 173 The categories of people that can apply for an appointment of administrator are too wide, particularly “any person with an interest in land affected by an owners corporation”. Does this apply to someone with an equitable interest? If so, it should not.</p>
<p><b>PART 12—REGISTRATION OF MANAGERS</b></p>	
<p><b>Division 1—Managers to be Registered</b> 12.3 Application for registration  188 If details given in application or annual statement change</p>	<p>Refer to Appendix at the end of submission for complete analysis.</p> <p><b>Recommendation:</b></p> <p><b>In Part 12 – Registration of Managers, Clause 180 [2] needs another subsection requirement addressing:</b></p> <p><b>IBCMV strongly recommends qualification based registration of managers. That is, tying registration of a manager to having an educational qualification.</b></p> <p><b>Given the mapping of consumer risk areas in the completed Vic Implementation Guide, it is recommended this qualification be the Strata and Community Title Management industry’s Certificate IV within the PODS package.</b></p> <p>This is inherently required to improve skills, mobility and training in an industry with massive looming staff shortages. Refer previous submission “Reducing the compliance burden from registration of managers”.</p> <p>Clause 188 If manager doesn’t notify material changes to annual statement within 14 days after the person becomes aware of the changes, the penalty for this offence is 10 penalty units, which has changed from 25 penalty units in the exposure draft of December 2005. We concur with the reduction, but believe it has not decreased enough. Still at over \$1,000 for what is a relatively minor offence that may not be deliberate but merely the result of an oversight or delay. Change to 5 penalty units.</p>

<p><b>Division 2—Register of Managers</b> 193 Purposes of register of managers</p>	<p>Clause 193 [d] should be deleted because it is not one of the purposes of the Register of Managers intended as per the Final Report, it is not relevant and also because it allows for the release of sensitive commercial information of customers of managers. A register of who manages what owners corporations has far reaching implications for a managers business if the client base of a manager is accessible by others. What other industry has to supply a list of their client base?</p> <p>Clause 194 [j] “any other prescribed information” should not include sensitive commercial information as per the above issues with Clause 193 [d].</p>
<p><b>Division 3 – General</b> 199 Application of Fair Trading Act 1999</p>	<p>Clause 199 now provides for various provisions of the <b>Fair Trading Act 1999</b> to extend and apply (with any necessary modifications) to paid managers under this Part. These include the inspection powers (apart from those excepted) set out under Part 10 of the <b>Fair Trading Act 1999</b>, the Director’s power to obtain information and documents to assist in monitoring compliance, as set out in section 106HA of the <b>Fair Trading Act 1999</b>, and some of the enforcement provisions in the <b>Fair Trading Act 1999</b>.</p> <p>It is noted that the provisions of the Fair Trading Act 1999 have now changed, being applicable to managers only – not to any others.</p> <p><b>However, a regulatory regime that includes application of the Fair Trading Act 1999 for professional “paid” [for fee or reward] or “registered” managers but that does not apply equally to the newly introduced “volunteer” managers of self-managed bodies corporate remains highly discriminatory, and may simply lead to “opting out” and self management which is likely to result in reduced levels of service and security for members.</b></p> <p><b>It must also be remembered that, given our recommendation at Clause 119 [for it to be mandatory for an owners corporation to appoint a manager in some circumstances] has not yet been adopted, a \$1 billion dollar building asset with 500 lot owners and an annual budget in the millions of dollars may still be self-managed by a volunteer manager who is not subject to the application of the Fair Trading Act 1999, yet a “paid” or “registered” manager of a suburban block of 6 units with a \$10,000 budget is subject to application of the Fair Trading Act 1999.</b></p> <p><b>Also consider the new immunity given to the volunteer manager at Clause 123 provides that any liability that would otherwise have attached to the volunteer manager attaches instead to all the owners of the owners corporation.</b></p> <p>Thus, the same recommendation as previously is reiterated below.</p> <p>The enforcement powers given to the Director in Part 12 of the Bill includes penalty units of 240 (natural person) and 600 (body corporate; which is up to approximately \$60,000). These enforcement powers are inconsistent with the internal disputes resolution process, proposed mediation/conciliation and the provisions for the enforcement of rules. The enforcement provisions under Part 12 will deter voluntary committees and self management. Managers will increasingly need to seek legal advice on matters to ensure compliance with the legislation and to avoid prosecution.</p> <p>Application of the Fair Trading Act 1999 is inconsistent with the announced Government policies, Final Report and the Future Directions Paper and therefore has not had any input from stakeholders. It is inappropriate to apply criminal sanctions to private property managed by unqualified/unsupported individuals acting on committees who are managing not for profit owners corporations; or managers. An owners corporation is not permitted to undertake any business activities and does not trade with the public at large.</p>
<p><b>PART 13—GENERAL</b></p>	
<p><b>PART 14—AMENDMENT OF SUBDIVISION ACT 1988</b></p>	
<p><b>PART 15—AMENDMENT OF SALE OF LAND ACT 1962</b></p>	

<b>PART 16—AMENDMENT OF OTHER ACTS SCHEDULES</b>	
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**Provision catered for under existing regulatory framework but not provided for under proposed new regulatory framework.**

Owners Corporations Signs

There is no provision in this Owners Corporations Bill for owners corporations signs as per current laws - Regulation 314 [5]. The purpose of the sign is for contact details in emergency situations and also the serving of any documents for the body corporate.

Also, under this current regulation, a letterbox may not have initially been erected where there was a manager and a sign had been erected in lieu of, so if there is no future requirement for a sign, and also no letterbox in place, there is no contact point for the owners corporation.

It is recommended that a sign be required but a letterbox is not required because the letterbox often does not get cleared.

The sign indicates the place for serving of documents, ergo, a letterbox is not required.

## APPENDIX - Qualification based registration

### Recommendation:

**In Part 12 – Registration of Managers, Clause 180 [2] needs another subsection requirement addressing:**

**IBCMV strongly recommends qualification based registration of managers. That is, tying registration of a manager to having an educational qualification.**

**Given the mapping of consumer risk areas in the completed Vic Implementation Guide, it is recommended this qualification be the Strata and Community Title Management industry's Certificate IV within the PODS package.**

This is inherently required to improve skills, mobility and training in an industry with massive looming staff shortages. *Refer previous submission "Reducing the compliance burden from registration of managers".*

The IBCMV is committed to expanding its education and training role underpinned by the deployment of the national competency standards and qualifications. This will deliver a common and nationally driven approach to the education, training and assessment of strata and community title managers for the first time.

### **National Competencies & Nationally Recognised Qualifications**

The Strata and Community Title Management Industry for many years has been inappropriately aligned with the Real Estate Sector. The national industry body, the National Community Titles Institute ( NCTI ) has been working for the past 7 years to correct this. In July 2004 the Strata and Community Title Management industry was fully endorsed in the Property Development & Management Training Package (PRD01) with national competency standards which will now support the development of appropriate education. A national implementation guide has also been developed and it is anticipated that training will be available for the first semester of 2007.

IBCMV through the National Community Titles Institute is committed to the implementation of appropriate education and has been instrumental in ensuring that the strictest licensing requirements by industry practitioners in NSW were included. IBCMV is committed to the implementation of appropriate education which supports professionalism and protects consumers.

Property Operations and Development Sector  
Qualifications covered by these competency standards

PRD30504 Certificate III in Property (Operations)  
PRD40504 Certificate IV in Property (Operations)  
PRD50504 Diploma of Property, Asset and Facility Management  
PRD60504 Advanced Diploma of Property, Asset and Facility Management

This training package was developed specifically for our industry and covers a number of industry sectors. The Property Operations and Development Sector (PODS) of the Property Services Industry provides for the investment, creation, and utilization of property assets within the broader economy. The sector comprises the following broad functional areas:

- (Commercial) Property Managers
- Property Development Managers
- (Real Estate) Asset Management
- Community and Strata Management
- Facility Management

This recognises the significant, fundamental differences between the Real Estate Sales & Residential Property Management sector with the specialised Strata and Community Title Management sector. Strata and Community Title Managers deal with:

- The management of people in a community living environment
- Manage billions of dollars of other peoples money on an on-going and not a single transaction basis
- Care for the common property of hundreds of thousands of owners corporation nationally
- Manage entire communities and their current and future assets and facilities

Real Estate Agents on the other hand perform very different functions for individuals, not a group of people. They deal with these individuals in single property transactions such as collecting rent on investment properties, finding and disciplining tenants and dealing with property owners over the sale of single homes or commercial premises.

Thus the creation and endorsement of the PODS package, which encompasses Strata and Community Title Management and a range of other specialised property service related specialists, recognises the vital roles and functions which set them apart from general Real Estate Agency practice and management.

This recognition of the special skill needs required to perform, at an acceptable standard, the functions of a Strata & Community Title Manager, means that the adoption of PODS will provide professional Strata & Community Management services and consumer protection to the general public.

Industry and professional training is of the highest priority within Australia as we battle against skill shortages in the workplace and the desire to upgrade professional standards to ensure that the economy continues to grow.

The facilities that are currently managed by the Strata & Community Management Industry continue to grow at extraordinary levels. No longer do managers administer individual blocks of units and commercial and industrial sites, they are in fact also managing whole suburbs, 500 unit high-rise residential blocks, international class resorts and mixed use development complexes.

As Governments continue to support high density living, more and more bodies corporate/owners corporations will be built, creating complex communities of the future. The days of 20 lot Strata Corporations are gone. Communities today are already complex and over the next 10 years whole cities will be built similar to those in America; these communities will substantially affect the current social structure and order of life as we know it.

Because NSW was and continues to be the only State to have licensing, IBCMV and NCTI have worked with the Office of Fair Trading NSW and TAFE to understand and determine consumer risk policy requirements which was then used as a foundation for Victoria and other states.

The Victorian Implementation Guide to support the PODS Training Package has now been finalised with specific Victorian legislation, and addresses and incorporates the national "consumer risk" elements of Strata and Community Title Management. This bridges the gap between consumer risk regulatory requirements and training; as well as supporting harmonised national regulation of the Strata & Community Management industry nationally.

As far as we understand this has never been done before and shows that our industry is serious about education for our members nationally. In Victoria, IBCMV will also establish requirements which members need to adhere to based on these competency standards.

The IBCMV also believes that it is the initial *and* ongoing education of practitioners which will deliver long term benefits for the community. IBCMV has a Continuing Professional Development (CPD) Program. The Program is designed:

- to ensure all members maintain a high standard of professionalism and
- to assure the public of the high ethical and professional standards maintained by IBCMV members

It is also designed to ensure membership of the IBCMV is a status to be valued both by members and the users of Strata and Community Title Management services. This is achieved through continuing skill development and the maintenance of a current knowledge base on issues and subjects relevant to the industry. To ensure equity for all members the IBCMV has a point system for a biannual continuing professional development program.

Qualification based registration is not of itself a substitute for ongoing education, training and the support of professionals by their industry Institute. A contemporary and forward looking model is for government to support the IBCMV to strengthen the professionalism of practitioners.

By being proactive Governments can prevent the crisis, which has started to surface in Sydney and the Gold Coast where most of our complex high rise communities are being built.

IBCMV seeks your support in our endeavour to do things right for the Strata Title/Body Corporate Industry and the millions of consumers/constituents living in these communities.

**Recommendation:**

**In Part 12 – Registration of Managers, Clause 180 [2] needs another subsection requirement addressing:**

**IBCMV strongly recommends qualification based registration of managers. That is, tying registration of a manager to having an educational qualification.**

**Given the mapping of consumer risk areas in the completed Vic Implementation Guide, it is recommended this qualification be the Strata and Community Title Management industry's Certificate IV within the PODS package.**

This is inherently required to improve skills, mobility and training in an industry with massive looming staff shortages. *Refer previous submission "Reducing the compliance burden from registration of managers".*

The customised Victorian Implementation guide has been made available for your review.