



Reducing the compliance
burden from registration of
body corporate managers,

A submission to

Owners Corporation Bill

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.

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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 and 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 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

Context

VCEC [Victorian Competition and Efficiency Commission] is the Victorian Government's foremost advisory body on business regulation reform and opportunities for improving Victoria's competitive position. It will review the RIS [Regulatory Impact Statement] and advise on the economic impact of significant new legislation, such as the Owners Corporation Bill. This has "raised the bar" in terms of the standards of the legislative review process. This in turn places extra requirements on Consumer Affairs Victoria [CAV] to consider and deal with as part of the process. It also deals with the cost burden on business through BIAs [business impact assessments]. VCEC's latest publication, *The Victorian Regulatory System 2006*, brings together revealing information about 71 Victorian Government regulators of business and their regulation.

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 issued an interim response and will make a complete response by July 2006.

Much of this submission has been taken directly from these sources.

Introduction

This submission does not specifically address policy intent as such. The IBCMV submission to the Owners Corporation Bill addresses the relevant points. This submission merely addresses an attempt to reduce the regulatory burden of compliance costs to business of registration of body corporate managers resulting from the proposed new regulatory framework.

Reducing the regulatory compliance burden

Whilst regulation is important in achieving policy objectives there is an increasing influence of “risk aversion”. Regulation has come to be seen as a panacea for many of society’s ills and as a means of protecting people from inherent risks of daily life. Any adverse event – especially where it involves loss of life, possessions, amenity or money – is laid at government’s door for a regulatory fix.

The costs of regulation to business involve not just extra time, paperwork and capital outlays, but also deflects management from the core activities of the business. Compliance matters for small businesses can consume more than 25% of the time of senior management. At the same time, it involves substantial government resources and thus significant burdens on taxpayers.

Regulation is essential to the effective functioning of our economy and society, but it has costs and limitations. Regulation should seek to manage risk, not eliminate it, and a failure to deal sensibly with risk would expose Victorians to even greater threats to their wellbeing in the years ahead.

It is hoped that no regulation is introduced unless the need for government action *and* the superiority of the preferred option have been transparently demonstrated. IBCMV welcomes the Australian Government’s recent announcement that more rigorous cost-benefit analysis is to be used in regulation making. This includes the use of The Office of Small Business Compliance Costing Tool that helps measure the compliance costs of regulation and thus the impact of regulation on business both large and small. This tool complements existing regulatory process, such as the Regulatory Impact Statement.

It is also important to apply cost-benefit analysis to different options; not just the proposed or preferred option. In many cases a regulatory proposal may yield a net benefit to society, but at a higher cost than an alternative with better design features. Such a comparative exercise should include, as a benchmark, the option of choosing *not* to regulate [ie the status quo]. It is important that the possibility of self-regulatory alternatives be considered as a matter of course.

Practices in other jurisdictions should be assessed, and if any are less onerous than the proposed regulations, an explanation of why they are not suitable in the Victorian context should be included. For example, in the case of regulatory [ie registration, licensing] requirements of managers, all other jurisdictions except NSW have in place requirements equivalent to the status quo in Victoria.

The draft RIS should be made available for comment [as is required by COAG for making national regulations and standards]. The draft should have sufficient detail to enable meaningful feedback.

Assuming government has already considered the above; IBCMV then requests that consideration be given to reducing the regulatory compliance burden on body corporate managers through:

- 1. Longer term of registrations**
- 2. Timeliness of Registration approvals**
- 3. Subsidised registration fees**
- 4. Manager's prescribed annual statement and changes to statement should exploit use of information technology and not be duplicated across other government departments**
- 5. Maintain level of mandatory Professional Indemnity insurance cover at \$2 million**
- 6. Pursue risk based enforcement based on professional association membership**
- 7. Body Corporate Management businesses are small businesses so the regulation needs to "think small first"**
- 8. Inspectors and auditors requirements impose substantial administrative burdens.**
- 9. Reduce excessive reporting and recording burdens relating to Keeping of Records and the Owners Corporation Register**
- 10. Address overlaps and inconsistencies between various state jurisdictions in the new regulations**
- 11. Improve skills, mobility and training in an industry with massive looming staff shortages**
- 12. Systemic reform through greater national harmonisation is required**
- 13. Introduce mechanisms, such as a post implementation and periodic reviews, to ensure that the regulatory framework remains relevant and effective over time**

The efforts outlined above and expanded below would reduce unnecessary red tape and will improve the regulation in a way that better achieves government's policy objectives at least cost.

1. Longer term of registrations

Rather than annual registration, make the term of registration either 3 or 5 years.

IBCMV understands the term of the registration will be set to reflect the prevailing risks in this market, but believe there is scope to reduce the burden by increasing the term as appropriate to either 3 or 5 years. Depending on the actual renewal process, there can be substantial savings from allowing registrations with longer terms.

As shown below, various other regulatory schemes in Victoria show examples of much longer maximum duration of occupational licenses/registrations than nearly all activities regulated by CAV. This is the case even though the Plumbing Industry Commission and Energy Safe Victoria are examples of regulators that also have mandatory insurance requirements.

Regulator	Licence	Term
Plumbing Industry Commission	Plumbing registration	3 years
Registration as a bookmaker	Bookmakers and Bookmaker's Clerks Registration Committee	3 years
Victorian Taxi and Tow Truck Directorate	Driving Instructor Authority	3 years
Victorian WorkCover Authority	Asbestos removal licence	3 years
Energy Safe Victoria	Electrician's licence	5 years
Victorian WorkCover Authority	Explosives licence	5 years
Victorian Institute of Teaching	Teacher registration	5 years
Licensing Services Division (Victorian Police)	Handgun and longarm licences	5 years
VicRoads	Heavy vehicle licence	10 years
Victorian Commission For Gambling Regulation	Gaming industry employee's licence	10 years

2. Timeliness of Registration approvals

The delays in processing and granting approvals and uncertainty about those approval times can also impose substantial costs. The timeliness of regulatory processes will be of particular concern, whether for those body corporate management company owned firms buying and selling businesses or franchisors selling franchises.

3. Subsidised registration fees

The regulatory fees are characterised by granting access rights to engage in body corporate management activity. Access will be in the form of a registration enabling Government to regulate activity as an instrument of government policy.

The registration fees are intended to elicit a particular behaviour and produce some form of public benefit. Recovering the full cost of administering the regulation from the regulated body corporate management industry (and thus bodies corporate occupier and investor owners) is inappropriate where the benefits of this regulatory activity flow to unrelated third parties.

The body corporate management industry, which is almost entirely small businesses with 80% having fewer than 5 employees [Refer 7], cannot support costing for full recovery. IBCMV recommends a subsidized or marginal cost pricing basis for manager's registration fees.

4. Manager's prescribed annual statement and changes to statement should exploit use of information technology and not be duplicated across other government departments

Managers will also be required to lodge an annual prescribed statement, and if any details change throughout the year for notice to be given to the BLA [Business Licensing Authority] within 14 days. This statement will cover such things as contacts, business, professional indemnity insurance, orders and undertakings, and other prescribed details.

Information technology needs to be systematically used to reduce business compliance costs.

Most welcome is the Australian government's intended introduction across all levels of government of "smart form" technology to pre-populate forms with previously recorded information, and the use of electronic signatures so that electronic forms can be verified.

This is particularly important given that much of this same information is required of body corporate management businesses from other government departments for different purposes.

5. Maintain level of mandatory Professional Indemnity insurance cover at \$2 million

Holding PI [Professional Indemnity] insurance is a key part of this scheme to provide compensation for body corporate managers' clients or other affected people in the event of proven negligence.

Mandatory insurance cover in Victoria differs widely in many regulated industries. Compulsory insurance coverage required for health professionals varies from \$20 million for pharmacists to none for Chiropractors and Psychologists.

Regulator	Mandatory insurance Coverage required
Architects Registration Board	\$1.2 million
Building Commission	Varies
Chemical Standards Branch	\$30 000
Chinese Medicine Registration Board	\$2 million
Chiropractors Registration Board	None
Dental Practice Board of Victoria	\$10 million
Energy Safe Victoria	\$5 million
Food Safety Unit	\$5 million
Nurses Board of Victoria	\$2 million
Pharmacy Board of Victoria	\$20 million
Physiotherapists Registration Board of Victoria	\$1 million
Plumbing Industry Commission	\$5 million
Podiatrists Registration Board of Victoria	\$5 million
Private Hospital Unit	\$20 million
Psychologists Registration Board of Victoria	None

Real Estate Agents for example are only required to have \$1 million cover – which incidentally, even if it specifically included cover for body corporate management, is not even legally enough for them to currently manage bodies corporate in Victoria.

Currently, the regulated level for body corporate managers in Victoria is \$2 million.

This can be comparatively costly for smaller and/or part-time operators to obtain the required insurance compared to larger businesses, creating a potential barrier to competition. The result can be higher prices and/or fewer body corporate managers, particularly in rural areas. This can have the perverse outcome of reducing the access to services for some consumers.

Even for full time small businesses with a competitive quality policy with \$2 million cover has an annual premium of about \$2,500 which in a typical small business with annual income less than \$100,000 is an onerous percentage of total income. To obtain \$5 million cover for a small business with annual income less than \$100,000 has an annual premium of about \$4,000 which would cripple this small business industry (refer 7) – annual premium rates for larger businesses obtaining \$5 million cover are about \$10,000.

IBCMV requires body corporate manager members to have PI insurance, as required by law, as a criterion of membership. IBCMV understands the number and level of claims on the PI insurance of body corporate managers is extremely low in comparison to other professional service firms such as accountants and solicitors. Accountants it is understood don't even require PI insurance at all. In the past 3 years, IBCMV believes there have been only a handful of claims of little value against body corporate managers [of the known claims only 1 of the 4 was of any consequence in terms of monetary value].

In other jurisdictions the equivalent body to CAV is in NSW through the Office of Fair Trading which is the only state with licensing of body corporate managers. Although direct comparisons are fraught and consideration must also be given to related protection mechanisms, whilst there is future provision made for it there is no compulsory PI insurance cover currently set in NSW legislation.

Based on the above, maintain the mandatory insurance cover required at \$2 million as an appropriate level of cover commensurate with managing the risk involved.

6. Pursue risk based enforcement based on professional association membership

The benefits of regulation can come only from businesses and individuals complying with the regulation. Without active enforcement, not only are some of the benefits of regulation forgone, but those businesses that do devote effort to comply are put at a competitive disadvantage to those that do not.

Enforcement activity, including inspections and audits, can be time consuming and thus costly, even for businesses which comply with regulatory requirements. Consequently, targeting enforcement on potential poor performers can reduce the adverse impacts on those which do comply, and strengthen incentives for better performance.

Risk based enforcement strategies would better focus enforcement activity through assessments of the likelihood and impacts of non-compliance across the body corporate management sector.

CAV's regulatory enforcement is already risk based and it is recommended the same approach be taken here to reduce the possibility that not only are unnecessary inspections carried out of low risk businesses, but also that necessary inspections may not be carried out on higher risk businesses.

The recommended approach is to target managers first if they are not members of a professional association, and to target managers last if they are a member of the peak Victorian professional association - the IBCMV [because of standards already higher than statutory obligations and already voluntarily self-regulated and imposed as part of membership].

Further, consistent with CAV's approach in other regulated activities, the enforcement policy needs to be well publicized to encourage compliance.

7. Body Corporate Management businesses are small businesses so the regulation needs to “think small first”

More than **90%** of body corporate management businesses employ **less than 10 people**
More than **80%** of body corporate management businesses employ **less than 5 people**

Complying with regulation often poses greater challenges for smaller businesses. This can particularly affect access to services in regional areas where small businesses are even more important. The compliance challenges of these small businesses present a challenge, given the need to provide adequate protection to the consumer of their management services.

The regulations should “**think small first**” based on the assumption that regulation designed with the capacity and constraints of small business in mind would also be readily implemented by larger businesses.

Further, special assistance is required for these smaller businesses in the form of guidance materials specifically targeted to small business.

This approach is already consistent with CAV’s approach in regulating other activities.

8. Inspectors and auditors requirements impose substantial administrative burdens.

Other requirements impose substantial administrative burdens. These include the cost of providing information to inspectors and auditors who gather information on compliance, and the cost of preparation and accompanying inspectors during their visit.

This is notwithstanding CAV’s informal response that provisions are only there to create enforcement powers for where there have been breaches of the Act, that all legislation being passed is containing these references for consistency so enforcement officers are certain as to what their powers are, and that they do not expect these would be widely used; rather it will be a rare case.

9. Reduce excessive reporting and recording burdens relating to Keeping of Records and the Owners Corporation Register

IBCMV had a meeting in May 2006 with the office of Minister for Consumer Affairs, Marsha Thomson; and Consumer Affairs Victoria. From this meeting and from informal discussion immediately afterward, it was apparent many of the issues identified by IBCMV in its submission to the Owners Corporation Bill had been recognised, agreed and would be amended accordingly.

IBCMV was heartened by CAV’s informal response to delete Clause 12.16[d] of the Register of Managers in recognition of the concern raised 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. It is noted CAV agreed to remove this requirement whose intention was that CAV may want to contact bodies corporate but it was recognised this was a large data collection program for information rarely used and thus not warranted.

Another good example of CAV’s consultation process in considering the IBCMV submission was that CAV agreed and changes would be made to better reflect the role of the manager in performing the roles of secretary and chairperson.

Yet another example is that CAV agreed that ultimate responsibility for fees should remain only with the owner not the occupier, since whenever more than party is responsible it inevitably creates uncertainty and reduces accountability.

However, there were some issues though that were not agreed upon. 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.

Whilst CAV did agree that people need to be supervised and a reasonable fee be charged for inspections, it did not agree the Owners Corporation Register is an onerous overlap of other records required to be kept. The policy intention is ready access to information and that there would be a standard set of documents that an owner could ask to see. IBCMV requests that the policy objective of access to information be reexamined to assess if this can be achieved through less burdensome means.

10. Address overlaps and inconsistencies between various state jurisdictions in the new regulations

Potential overlaps and inconsistencies need to be addressed whenever new regulation is being proposed or developed. Cross-jurisdictional comparisons aid in assessing the efficiency and effectiveness of Victoria's regulatory regime.

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.

Refer below to 11 for the extension of this argument.

For an independent analysis, refer to *The law of strata title in Australia: A jurisdictional stocktake*, an article by Griffith University's K Everton-Moore, A Ardill, C Guilding and J Warnken; *Australian Property Law Journal*, June 2006; published by LexisNexis Australia. This provides an overview of strata title legal provisions applying in each Australian state and territory. Specific issues addressed include: each state's legislative framework, plans for reform, governance arrangements concerning power and responsibility distribution, and dispute resolution procedures.

11. Improve skills, mobility and training in an industry with massive looming staff shortages

Regarding the registration of managers, IBCMV strongly recommended 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 was recommended this qualification be the Strata and Community Title Management industry's Certificate IV within the PODS training package. Refer to IBCMV submission for further details.

At the same meeting referred to earlier, this was another issue that was not agreed upon. The response was that registration of managers is a compromise between self regulation and full licensing and government will not at this stage adopt the mandatory requirement of qualification based registration – though supportive of IBCMV adopting criteria based on this requirement.

IBCMV accepts this but feel it is imperative for government to understand the extent of the looming problem of skills shortages. This issue is related to the points addressed in 10 and 12.

The ability to attract skilled workers and the mobility of skilled workers across Australian jurisdictions underpins a well-functioning labour market and productivity growth.

The key concern of business is the impact of inconsistent training and licensing [ie licence, registration, self-regulatory] arrangements across jurisdictions. This adds compliance costs for businesses operating nationally and creates complexity for smaller businesses operating in cross-border regions such as Albury-Wodonga.

The National Strata Management Benchmarking Project 2005 showed some key findings such as -

- Most businesses consider it difficult to source and employ new employees
- Within the next 10 years 1/3 of all smaller businesses plan to sell their equity to an external party
- Perceived impediments to growth are staff resourcing and the changing regulatory environment
- The outlook for the industry is positive with the majority of businesses expecting moderate [10%-25%] to strong [>25%] growth over the next 3 years
- Huge employment demand in the next 3 years with business to increase staff between 21-56%
- Average age of principals is 50

Griffith University -

- It is currently estimated 20,000 Australians work in and derive their income from the strata title industry [2005 Griffith University Conference Paper]

In the next 5 years the strata and community title industry nationally will need something in the order of 10,000 new jobs to cover both industry growth and replacement of jobs through attrition of an ageing workforce.

The Regulation Taskforce recommendations 4.32 and 4.33 was that COAG should extend its work on skills, training and mutual recognition to include both para-professionals and professional occupations and consider measures to align the national training system with occupational licensing and registration regulations.

In the Australian Government's interim response to this, it is asking COAG to build on the work already underway on measures designed to underpin a genuinely national approach to apprenticeships, training and skills recognition and alleviate skills shortages currently evident in some parts of the economy.

12. Systemic reform through greater national harmonisation is required

As ever more business activity occurs on a national scale, there is an increasingly compelling case for introducing uniform regulation across Australian jurisdictions.

IBCMV supports the Griffith University submission to the Prime Minister outlining 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**

The Government Briefing Paper was submitted in January 2006.

13. Introduce mechanisms, such as a post implementation and periodic reviews, to ensure that the regulatory framework remains relevant and effective over time

Consistent with principles of good regulatory process, these should encompass removing regulation made redundant by changing conditions, or amending regulation to reflect new circumstances.

Many areas of these regulations raise complex conceptual and practical issues. Reflecting this, there is uncertainty about the likely effectiveness of these regulations and significant scope for unintended consequences.

This ad hoc review of the regulations, in response to perceived problems or changes in circumstances, is an important mechanism for improving regulation. An additional protection against excessive or unduly costly regulation is a post-implementation review. This is important with considerable uncertainty about compliance burdens and net benefits. Such reviews provide opportunities for genuine and effective consultation with affected parties including business.

It is recommended there be:

a. An early post-implementation review undertaken within 1 to 2 years of new regulations coming into force

This is important where the compliance burden or the accuracy of initial cost-benefit analysis is uncertain. This review should be used to identify ways of lessening high compliance costs and unintended adverse impacts, and to test whether the net benefits predicted to flow from these regulations are being realized. To ensure cost-effectiveness, a two-stage process could be adopted:

- i. Opportunity for interested parties to raise any concerns;
- ii. Subject to significant problems being identified, a more comprehensive analysis covering the design and effectiveness of the regulations.

b. A 5 yearly review

Again, a two-stage process could be used to screen for priorities. If it proceeds to the second stage, a full review would be undertaken, entailing consideration not only of the design and effectiveness of the regulations but also whether alternatives to it would generate greater net benefits.