



A Response 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.

March 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 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

Introduction

The peak representative body of the body corporate industry, the Institute of Body Corporate Managers (Victoria) Inc., welcomes 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*

This will ensure that Victoria benefits from a strengthened and practical body corporate management Act and industry; and is consistent with the IBCMV recommendations.

IBCMV was committed to and fully supportive of the review and valued the opportunity given to assist and provide input.

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 exposure draft of the new Owners Corporation bill, there are 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 on the bulk of the issues, it means that the IBCMV is in agreement with the proposed draft and has no need to give comment on those aspects.

Though it also needs to be appreciated that in a few instances where the IBCMV recommendations have not been adopted, it is acknowledged that those recommendations were not adopted after careful consideration and thus the IBCMV will in most cases not reiterate the same case again here.

EXECUTIVE SUMMARY

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

1. 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 Key Issue below.*
2. 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.
3. 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. 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.
4. 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.

5. 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?
6. Register of Managers -
 Clause 12.16 [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?
7. Sections of this Owners Corporation Bill fail to properly recognise that managers perform much of the role of the secretary and chairperson of the owners corporation. 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.
 The requirement for the Chairperson of the owners corporation to chair the general meeting is different from current laws and it is not a good change. Owners are not equipped to effectively chair meetings as they do not have the required knowledge of the legislation and skill. This bill needs to allow for the owners corporation to elect who they want to chair the meeting. Under this section currently the meeting could not even go ahead if the Chairperson is not present. Current practice, where an owners corporation has a manager, is that the manager chairs about 99.9% of owners corporation meetings.
 There are already 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.
8. Ultimate responsibility should remain with the owner – not the occupier.
Occupier may be liable for fees and charges at Clause 3.7 applies mainly to commercial and industrial owners corporations; but what about residential? Delete this entirely. The body corporate has a legal relationship with the owners, not the tenants [occupiers]. This will also prolong collection time and create uncertainty as to responsibility for fees and charges.
 The *Duties of occupiers of lots* at Clause 7.10 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?
9. Application of the Fair Trading Act 1999 -
 The enforcement powers given to the Director in Part 13 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 13 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.

Key Issue - Qualification based registration

Recommendation:

In Part 12 – Registration of Managers, Clause 12.3 [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.

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 12.3 [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.

The customised Victorian Implementation guide is available for your review.

Provision	Issues
PART 1 INTRODUCTORY 1.3 Definitions	Clause 1.3 “common property” definition should include water rights, which is an increasingly important aspect in owners corporations.
PART 2—FUNCTIONS AND POWERS OF OWNERS CORPORATION	
Division 1—Functions and Powers of Owners Corporation 2.1 Functions of owners corporation	Clause 2.1 [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.
2.7 Power to delegate Division 2—Powers Relating to Services 2.9 Owners corporation not to carry on business	Clause 2.7 Drafting error - After the first “corporation” on line 3, add “other than”. Clause 2.9 [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.
Division 3—Powers Relating to Property 2.12 Power to acquire and dispose of personal property	Clause 2.12 This Section is badly drafted. Further, Clause 2.12 [4] should include reference to water rights, which is an increasingly important aspect in owners corporations.
Division 4—Power to Bring Legal Proceedings 2.14 Power to bring legal proceedings	Clause 2.14 [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.
Division 5—The Common Seal 2.16 When can the common seal be used?	Clause 2.16 [1] delete “at a general meeting.” It is unnecessarily restrictive to have to resolve the use of the common seal at a general meeting. Most resolutions are done by ballot as required. It also unnecessarily burdens owners corporation members with the added cost of a general meeting. Deleting “at a general meeting” would allow for a majority resolution by ballot. Clause 2.16 [2][a] delete “general”. That is, to include a committee meeting as well as a general meeting.
PART 3—FINANCIAL MANAGEMENT	
Division 1—Financial Powers 3.1 Owners corporation may levy fees 3.2 Extraordinary fees	Clause 3.1 [4] should read “has an approved maintenance plan” not just “has a maintenance plan”. This also needs a new clause that covers emergency repairs, as this is not contained anywhere. Refer Clause 3.2 [4]

<p>3.5 Bank account</p> <p>3.7 Occupier may be liable for fees and charges</p> <p>3.8 Penalty interest on arrears</p>	<p>Clause 3.5 [3] Separate bank accounts for maintenance funds should be <i>enabled</i> for amounts less than the prescribed amount, and <i>required</i> for amounts greater than prescribed amount. The prescribed amount for this to be included in the regulations should be initially set at \$10,000.</p> <p>Clause 3.7 This applies mainly to commercial and industrial owners corporations; but what about residential? Delete this entirely. The body corporate has a legal relationship with the owners, not the tenants [occupiers]. This will also prolong collection time and create uncertainty as to responsibility for fees and charges.</p> <p>Clause 3.8 VCAT should have the ability to impose a penalty on recalcitrant late and non payers.</p>
<p>3.11 Final notice</p> <p>Division 2—Accounts and Audit</p> <p>3.12 Financial records</p>	<p>Clause 3.11 [2] [c] last line; this is badly drafted. Before the word "notice", insert "final" for clarity.</p> <p>Clause 3.12 [b] after the word "true", delete "and fair". It is superfluous. What does this mean?</p>
<p>Division 3—Maintenance Plan</p> <p>3.16 What must a maintenance plan contain?</p> <p>3.17 When does a maintenance plan take effect?</p>	<p>Clause 3.16 This list is not nearly as extensive as the one proposed in our previous submission <i>Maintenance Plans</i> of March 2005. Will "prescribed class" include other items such as structure, roof, walls, windows, fire services, etc? It is strenuously reiterated IBCMW recommend this should be as per the previous submission.</p> <p>Clause 3.17 [1] change "special" to "ordinary" otherwise it is too difficult to be passed and is inconsistent with the intention of the Final Report for prescribed owners corporations to have a maintenance plan.</p>
<p>Division 4—Maintenance Fund</p> <p>3.18 Establishment of maintenance fund</p>	<p>Clause 3.18 [1] add "that has an approved maintenance plan" instead of "has maintenance plan".</p> <p>Clause 3.18 [2] needs to be the same as per Clause 3.5 [3]</p>
<p>Division 5—Asset Management</p> <p>3.27 Cost of repairs, maintenance or other work</p> <p>3.28 When can an owners corporation authorise a person to enter a lot?</p> <p>3.31 Upgrading of common property</p>	<p>Clause 3.27 [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 3.28 after "person" add "and persons".</p> <p>Clause 3.31 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 <i>Installation of intercom system</i>.</p>
<p>Division 6—Insurance</p> <p>3.32 What is an insurable building?</p>	<p>Clause 3.32 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 3.38 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 3.43 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>PART 4—MEETINGS AND DECISIONS OF OWNERS CORPORATION</p> <p>Division 1—First Meeting of Owners Corporation</p> <p>4.3 Obligations of initial owner</p>	<p>Clause 4.3 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>Division 2—Annual General Meeting</p>	
<p>Division 3—Special General Meetings</p>	
<p>Division 4—Procedure at General Meetings</p> <p>4.14 Who chairs the general meeting?</p>	<p>Clause 4.14 Chairperson. This is different from current laws and it is not a good change. Owners are not equipped to effectively chair meetings as they do not have the required knowledge of the legislation and skill. This bill needs to allow for the owners corporation to elect who they want to chair the meeting.</p> <p>Under this section currently the meeting could not even go ahead if the Chairperson is not present.</p> <p>Current practice, where an owners corporation has a manager, is that the manager chairs about 99.9% of owners corporation meetings.</p>

<p>Division 5—Ballots 4.21 Decision on ballot</p>	<p><u>Secretary of committee</u></p> <p>Clause 4.21 [1] There is a problem with forwarding the ballot to the secretary, as pursuant to 5.7 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>Clause 4.22 [3] [d] replace “secretary” with “receiving officer” Clause 4.22 [3] [e] replace “secretary” with “receiving officer”</p> <p><i>Refer to Point [7] in Summary.</i></p>
<p>Division 6—Proxies and Powers of Attorney</p>	
<p>Division 7—Decisions of Owners Corporation 4.28 Does the chairperson have a casting vote?</p> <p>4.32 Interim special resolutions</p>	<p>Clause 4.28 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>Clause 4.32 Proposal 21 of the Final Report aims to facilitate decision making – whereby interim special resolutions are allowed where at least 50% are in favour and not more than 25% against. The Final Report says this was intended to be for be for ballots, but [1] says “at a meeting”, so it is for meetings only and not for ballots. IBCMV recommends that the interim special resolution should equally apply to ballots as well as meetings.</p>
<p>PART 5—COMMITTEES 5.7 Secretary of committee</p>	<p>Clause 5.7 [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>Refer similarly to recommendations for secretary at Clause 4.21 and Clause 4.22 and the role of the manager at Point [7] in Summary.</p>
<p>PART 6—MANAGERS 6.1 Appointment and removal of manager</p>	<p>Clause 6.1 [3] says “an instrument or contract of appointment must be in the approved form”. Please find enclosed the IBCMV endorsed Form 4 Management Agreement for Consumer Affairs Victoria to approve. This is used by all IBCMV owners corporation manager members, representing more than 75% of all owners corporation management firms in Victoria, who manage approximately 200,000 lots.</p> <p>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.</p> <p>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.</p> <p>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.</p>

<p>6.3 Functions of manager where there is no committee</p> <p>6.7 Manager to return records</p>	<p>Two key trends are evident and growing, namely:</p> <ul style="list-style-type: none"> ➢ the level of investment in properties subject to owners corporations is significant and increasing [\$4.5 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. <p>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.</p> <p>As per the recommendation of the IBCMV submission <i>Response to Future Directions</i> 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.</p> <ul style="list-style-type: none"> ○ By size – as determined by number of lots in the owners corporation The owners corporation has 8 lots or more <p>Or,</p> <ul style="list-style-type: none"> ○ By size – as determined by annual receipts of the owners corporation if the gross annual receipts of the owners corporation exceeds \$200,000. <p>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]</p> <p>Or,</p> <ul style="list-style-type: none"> ○ 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 <p>Or,</p> <ul style="list-style-type: none"> ○ For multiple owners corporations if there is more than one owners corporation established within an integrated development <p>Or,</p> <ul style="list-style-type: none"> ○ By use if the owners corporation has multi-use lots <p>Or,</p> <ul style="list-style-type: none"> ○ By height – as determined by number of storeys if the owners corporation property is more than four floors in height <p>Thus, it is recommended that in Part 6 – Managers, Clause 6.1 Appointment and removal of manager, be amended to suit.</p> <p>Clause 6.3 - Section 2.7 requires an instrument for the delegation whereas Clause 6.3 seems to automatically confer the delegation where there is no committee.</p> <p>Clause 6.7 Manager must within 28 days after end of appointment [without renewal] or after being removed, return all records/funds. 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].</p>
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	<p>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>Further, "without renewal" is superfluous and needs to be removed. The IBCMV Management Agreement has an automatic rollover clause. A manager continues to act on behalf of the owners corporation until, and if, removed.</p>
<p>PART 7—DUTIES AND RIGHTS OF LOT OWNERS AND OCCUPIERS</p>	
<p>7.7 Address of new owners</p>	<p>Clause 7.7 The responsibility lying with the vendor does not work. They have no incentive to notify the owners corporation and do not do this. There is a need to either have vendors give notice of disposition and the purchaser give notice of acquisition. Penalties to be applied to both if they do not comply. [This may or may not require amendment of Sale of Land Act].</p>
<p>7.8 Address of absent owners</p>	<p>Clause 7.8 Penalties should be applied to these if they do not comply.</p>
<p>7.9 Advice to occupiers</p>	<p>Clause 7.9 Penalties should be applied to these if they do not comply.</p>
<p>7.10 Duties of occupiers of lots</p>	<p>Clause 7.10 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>PART 8—RULES OF THE OWNERS CORPORATION</p>	
<p>8.1 Power to make rules</p>	<p>Clause 8.1 This refers to Schedule 1 – but the heading of Schedule 1 is confusing. These are not the model rules. Replace "Rules of owners corporation" with the same heading as 8.1 "Powers to make rules".</p>
<p>8.2 Model rules</p>	<p>Clause 8.2 [2] versus Clause 8.2 [3]. Clarification is needed here whether model rules may be changed or whether they can only be added to.</p> <p>Clause 8.2 Model Rules should not apply by default, they should be optional only.</p>
<p>8.3 Rules to be of no effect if inconsistent with law</p>	<p>Clause 8.2 Should there be a transitional period or a sunset clause for old rules? For example, a commercial owners corporation operating 24x7. 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 8.3 [b] Delete this as the use of "is unreasonable" will result in many frivolous disputes.</p>
<p>8.4 Who is bound by the rules?</p>	<p>Clause 8.4 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 3.7 and Clause 7.10.</p>
<p>8.6 Recording of rules</p>	<p>Clause 8.6 [1] and [2] Add "or manager" after "secretary". Refer to Point [7] in Summary.</p>
<p>PART 9—RECORDS</p>	
<p>Division 1—Keeping of Records</p>	

<p>9.3 Availability of records</p>	<p>Clause 9.3 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 12.18 - 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. 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. There are extensive privacy issues with allowing inspection of all records [including for example correspondence], especially by anyone including purchasers. In 9.1 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 [h], [o], [p] and some parts of [i] because some accounting records should not be made available [should be as per 3.12 and 3.13 only, not other accounting records such as receivables]. Replace "free of charge" with "at no charge to the applicant". 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.</p>
<p>Division 2—Owners Corporation Register 9.5 What must be kept on the owners corporation register? 9.6 In what form must the register be kept? 9.7 Availability of register</p>	<p>Clause 9.5 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. Clause 9.6 Is this necessary? Clause 9.7 has the same issues as Clause 9.3 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. In support of this, according to Clause 12.18 - 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. 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. Inspection should not be allowed at any time; rather it must be made by appointment within a reasonable time. Notwithstanding our objection to the owners corporation register as per Clause 9.7 above, Clause 9.5 [j] needs some clarification. What is a "contract"? Contracts with plumbers? Tax invoices? Replace "free of charge" with "at no charge to the applicant".</p>

	<p>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.</p> <p>In general terms, IBCMV believes the increased complexity of the legislative framework will result in significantly increased management fees.</p>
<p>Division 3—Owners Corporation Certificate 9.8 Owners corporation certificate</p>	<p>Clause 9.8 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 9.8 [4] [vii] Again, what is a “contract”?</p>
<p>PART 10—DISPUTE RESOLUTION</p> <p>Division 1—Complaints and Procedures 10.2 Decision whether to take action in respect of alleged breach</p> <p>10.8 Report to annual general meeting</p> <p>Division 2—Powers of Director 10.10 Conciliation and mediation</p>	<p>Clause 10.2 [1] [b] This is superfluous. Delete [b] and thus it follows also that Clause 10.2 [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 10.8 [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 9 [3] regarding availability of records. There is an inherent conflict between keeping accurate records and complying with the Privacy Act.</p> <p>Clause 10.10 Conciliation and mediation requires a mediator that is skilled and knowledgeable in owners corporation issues.</p> <p>Clause 10.10 [1] This is poorly drafted. How does the Director assess whether a dispute is “reasonably likely to be settled”. Reword as Director “may” refer a dispute to conciliation and mediation.</p>

PART 11—APPLICATIONS TO VCAT	
Division 1—Owners Corporation Disputes	<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>
Division 2—Exemption Orders	
Division 3—Restriction of Access to Records	
Division 4—Appointment of Administrator 11.12 Application for appointment of administrator	<p>Clause 11.12 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>
PART 12—REGISTRATION OF MANAGERS	
Division 1—Managers to be Registered 12.3 Application for registration	<p>Refer to Key Issue outlined at the beginning of submission for complete analysis.</p> <p>Recommendation:</p> <p>In Part 12 – Registration of Managers, Clause 12.3 [2] needs another subsection requirement addressing:</p> <p>IBCMV strongly recommends qualification based registration of managers. That is, tying registration of a manager to having an educational qualification.</p> <p>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.</p>
Division 2—Register of Managers 12.16 Purposes of register of managers	<p>Clause 12.16 [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 12.17 [i] “any other prescribed information” should not include sensitive commercial information as per the above issues with Clause 12.16 [d].</p>
PART 13—GENERAL 13.2 Application of Fair Trading Act 1999	<p>The enforcement powers given to the Director in Part 13 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 13 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</p>

	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.
PART 14—AMENDMENTS TO SUBDIVISION ACT 1988	
PART 5—SUBDIVISIONS WITH OWNERS CORPORATIONS	
Division 1—Creation of Owners Corporation	
Division 2—Common Property	
Division 3—Alteration of a Subdivision	
Division 4—General Provisions Relating to Plans	
Division 5—Disputes and other Proceedings relating to Owners Corporations	
Division 6—Winding up of Owners Corporation	
PART 15—AMENDMENT OF OTHER ACTS	
PART 15AB—OWNERS CORPORATION ACT 2006	
SCHEDULE	
SCHEDULE 1—Rules of Owners Corporation	Refer to comment at Clause 8.1.

Provision catered for under existing regulatory framework but not provided for under proposed new regulatory framework.

Owners Corporation Signs

There is no provision in this draft Owners Corporation Bill for owners corporation 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.