



Consultation Paper Statutory Review of the Owners Corporation Act 2006 – Submission by Southbank3006 Inc

Thank you for the opportunity to comment on the *Review of the Owners Corporation Act 2006 Consultation Paper*.

Southbank3006 as a community group has an aim to bring a diverse community together breaking down the barriers created in vertical living in the most densely populated post code in Australia. We strive to be solutions focused on Livability solutions.

We have a total reach of 14,000 across our direct membership and via our social media

We have some 400 members of whom 95% reside in Southbank 3006 postcode. Southbank3006 has the largest resident membership base of the 2 resident groups in Southbank.

Because our focus is on livability 60% of our membership are owners of apartments and 40% are renters means we are well positioned to comment on the topics contained in the Consultation Paper.

Our relevant expertise in framing this response is based on:

- i. Feedback from our members, both owners and renters.
- ii. Information gained from a public forum we undertook on Strata and Owners Corporations.
- iii. Discussions with several OC Chair and OC members in a mix of buildings in Southbank. All had a minimum of 8 years' experience serving on OC committees in Tier 1 buildings.

What is Strata as a form of Organisation?

When you buy a Strata Property you become part of a Collective. You have not become a member of a Cooperative, a shareholder in a Company, or a member of an Association. Every individual has a responsibility to the Collective Good and that relates to the maintenance and operation of the common property. That is the Common Good takes precedence it is a collective and in that it has a unique place in our organizational forms something that many struggle with in understanding.

This concept of collectivism needs to form a backdrop to reforms and thinking on all the Topics in the discussion paper.

We are available to discuss in further detail any of the matters we have raised in this submission.

Southbank3006 Inc

2 September 2025

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Topic 1 Governance and related reforms

The 2021 reforms undoubtedly heralded a significant realignment in the governance arrangements in Owners Corporations (OCs) and overcame several issues that had impeded operations of OCs and management of common property. They also introduced some procedural amendments to the operations of OC Committees of Management (CoM).

There is however a need to building on those changes to deliver a better system governing OCs and their operations.

Governance

Elements for a governance framework for an OC need to be enshrined in the OC Act What constitutes the essential elements in a Governance Framework for an OC Committee?

The following is a framework the Review might consider recommending:

- i Separation of OC Management and Facility/Building Management Functions
- ii Strict compliance with prohibition of commissions in both Facility/Building Management as well as in OC Managers. So contractually include the provisions of Sect 122B of the OC Act in contracts with the parties providing these services. Breach of Sect 122B needs to be identified in the Contracts with both OC Managers and Facility/Building Managers as a matter that will lead to immediate “Termination Without Cause”.
- iii Details of all Facility/Building Management sub-contractors and suppliers to be tabled at every OC Committee meeting.
- iv All contracts with suppliers more than \$1,000 require approval by the OC Committee before they are entered into by either the OC Manager or Facility/Building manager.
- v Payment – Separation of ordering and payment approval processes needs to be mandatory.
- vi Payment approvals from OC bank accounts require Chair or another OC member to authorise prior to payment.
- vii Insurance – A competitive process for the broker appointment who is paid a fixed fee by the OC for their services and the Client/Contractor relationship is established between the Broker and the OC so any commissions with the insurer are transparent to the OC as required by Corporations Law.
- viii Conflicts of Interest Registers maintained by the OC Manager for the Committee members with declarations of actual or potential conflicts noted at each meeting.
- ix Any Committee member with a declared conflict to be required to withdraw from the decision making and the meeting when it arises.
- x The OC Act needs strengthening to include offenses relating to failure to declare conflicts of interest by either an OC Manager or a Committee Member or a Facility/Building Manager.

The Tier System: - This was a significant change by recognising the requirements of different sized communities required different approaches to management and operations. Further it paved the way to recognise the reporting and operational matters of OC varied according to size. That is a one size fits all approach on every matter is not fit for purpose.

Expanding use of the Tier System to cover more mandated items especially for Tier 1 and Tier 2 buildings. This is an effective mechanism to address the needs in more complex buildings without increasing the regulatory burden on smaller OCs. It will keep costs down in Tier 3 and Tier 4 OCs.

Governance and OC Managers We have addressed this in detail in our comments on Topic 4 “Manager conduct”.

Committee Operations and Functioning

Training for Committee Members

There is an urgent need for Training for Committee members via online training modules. The Governance Institute and the Australian Institute of Company Directors recommend this for directors of both companies and not for profit entities.

For all OCs all members elected to an OC committee should be required to undertake an induction program targeted at imparting a knowledge of the OC Act, the role of committees, governance and compliance, should be undertaken in the 29-day period following an AGM. If they fail to complete the training, then their appointment to the OC Committee should not be confirmed.

For Tier 1 and Tier 2 buildings additional modules should be completed in budgeting, purchasing, insurance and risk management within 2 months of the AGM. These should be optional for Tier 3 and 4 building committee members.

Committee Papers including Minutes, Records, Information Access.

The 2021 changes have delivered a quantum leap in key information being available to all owners especially in relation to minutes and key insurance policies. But additional work needs to be done to enhance the formulation and recording of policies across all aspect of the OC's operations especially in Tier 1 and Tier 2 buildings. E.g. a Purchasing Policy or procedures relating to modifications to a lot, EV charging.

Information access and Privacy. Given a recent VCAT decision asserting the rights of all owners to have access to all owners' data (name, address, mobile number, and email addresses) there is a need to protect an individual's data from malicious actors or obtain this data by exercising their rights under the OC Act and then pass it or sell it to third parties. This is a significant problem as it exposes all owners to a back door data breach especially vulnerable at-risk women and children.

The Commonwealth Privacy Act 1988 does not afford protection - At present almost every OC in Victoria is exempt as they fall under the \$3.0m turnover threshold test for mandatory coverage contained in the *Privacy Act 1988*. But under Section 6EA of the *Privacy Act 1988* a small business or a not for profit (i.e. and OC) can elect to **Opt In** to the Privacy Act and its Principles.

Remedy

The review should move to bring OCs within the ambit of the Commonwealth Privacy Act 1988.

*To avoid having to seek an amendment to the Commonwealth's Privacy Act 1988 a solution would be for the Victorian Government by regulation under the Owners Corporation Act introduce a requirement that all Tier 1, Tier 2, and Tier 3 OCs **Opt in** Privacy Principles under Section 6EA of the Commonwealth Privacy Act 1988.*

*This **Opt In** should be completed by 31 Oct 2026 which would provide OCs with sufficient time to complete the task.*

Records Management

Because OC Managers mistakenly view the records of the OC as their property, they view them as an asset they can leverage if their contract is under review. They set this up by:

- i Use of bespoke finance packages offered by third parties which have no simple migration Application Program Interface (API).
- ii Use of incompatible records management systems
- iii Filing of records (minutes and key papers) on their IT infrastructure means that the cost of churning to a new manager can not only be expensive in terms of expense but also in terms of time and loss of data/records.

Existing OC Managers contracts usually contain a significant \$ cost they can levy and OC on either their contract not being renewed or their termination.

Remedy

These practice needs to be addressed by the review.

Separately a prudent OC committee of Management should set up its own document retention systems outside of the OC Managers. The license for the OC Committee's systems should in in the OC's name to avoid Consideration¹.

Committee Papers

In Tier 1 and Tier 2 buildings to improve Committee performance it would assist if the Director of Consumer Affairs provided a guideline for OC Committees and OC Managers on effective Board Papers Decision making. This should cover off the style, format and content of papers submitted to the Board.

This approach seeks to ensure that the material put before the Committee is concise, substantiated by facts, realistic about risks and argued within the framework of the OC strategic policy agenda. A suggested guideline for OC Papers might include the following elements:

- i Subject/Title and Agenda Item No
- ii Executive Summary and high-level financial implications if any
- iii Background Outline to issue being addressed
- iv Key Issues and Financial Implications to be considered
- v Options available to committee
- vi Recommendations
- vii Decision required
- viii Any detailed papers and supporting analysis in support should be labelled and appended as Attachments and referenced at the Key Issue to which it refers as to where the attachment
- ix Papers should not exceed 2 to 3 pages in length.

Committees Size and Annual General Meeting Issues

Size of Boards especially in Larger Buildings (Q5)

The existing provisions regarding Committee Size and Sub Committees and ability to co-opt additional people with specialist knowledge or skills works well even in Tier 1 buildings.

It is instructive that the Australian Institute of Company Directors (AICD) Director Tools kit on Board Size recommends the following as appropriate to meeting their Good Governance Principles.

Good governance principles concerning board size and appointments

By way of 'rule of thumb' example, the following board sizes are not unusual for Australian corporations:

- Large ASX listed (8 to 12)
- Medium ASX listed (6 to 8)
- Small ASX listed (4 to 6)
- Large charities/NFP boards (8 to 12)
- Small charities/NFP boards (5 to 8)
- Public unlisted companies (4 to 8)
- Proprietary companies (1 to 4)
- Public sector boards (6 to 12)
- University boards (14 to 22)

From the AICD Tool Kit for Directors "Size of Boards"

¹ Typical cloud-based services are those provided by BuildingLink and MyBos. Both enable storage of critical policies, documents, minutes, maintenance plans, insurance policies rules etc. and offer portals where all owners and residents can view these. They also offer closed loop direct communication channels by SMS and email to all owners so an OC Committee can communicate directly and speedily with all owners and residents without relying on the OC Manager. Social media platforms such as Facebook and WhatsApp require participants to voluntarily install an app on their smart phone do not provide the functionality required in an OC and contain inherent security flaws and thus should be avoided by OCs.

This indicates that having a Committee of between 3 and 7 is more than adequate to the tasks involved in an OC especially if the co-opting provisions are used for Working Groups. That is there is no need to vary the current arrangements although renaming Sub- Committees as Working Groups may encourage targeted assistance to a committee on specific project focussed tasks in a building.

Remedy: No Change is Necessary to the Committee Size as defined in the OC Act

Annual General Meeting Committee Election Process Issues

Rotation of Committee Membership:

Section 71(2) of the OC Act requires that 100% of an OC Committee retire annually. This opens the potential for a significant loss of “Corporate Memory, knowledge about the building’s infrastructure, and experience. This does result in stop start thinking and makes a building more dependent on the OC manager or the Facility Manager than it should.

Rotation should be encouraged but 100% annual rotation is a suboptimal approach especially in complex buildings such as Tier 1 and Tier 2 OCs.

Remedy:

In Tier 1 and Tier 2 OCs 33% of the Committee retires annually along with any people appointed to fill a casual vacancy. This would mirror the position in listed public companies and provides for continuity and corporate memory.

Nomination Process for OC Committees, Candidate Information, and Election Process:

In Victoria under Section 103(4)(b) an individual may nominate “orally” at the actual meeting unless the OC has resolved and circulated the Procedures of the meeting (Section 80(2)) to require nominations in writing. In some other States nominations must be called for in advance and must be in writing setting out their qualifications and experience. That is there is NO nomination from the floor capability.

The current arrangements result in a poorly managed meeting with OC members uninformed as to who is to be on the committee and what their skills and experience is.

Remedy:

Section 103(4)(b) needs to be removed and replaced with a provision that nominations are to be in writing and submitted within 3 days of a Notice of Meeting being issued.

Further all candidates submit a statement of skills and experience to the task and that information is to be provided to all OC members 5 days after the Notice of meeting is issued. Failure to submit the statement of skills and experience voids the nomination and their name should not be included on a ballot paper.

Election Process must be by Ballot of Lot Entitlement and not a show of hands. This ensures there is a clear record of voting. It must require that a member of the OC is either voting YES or No or Abstain separately for each person standing for election.

Financial Management Issues Q2

Accounting Standards reference -Section 34(3)- needs to be updated (Q2)

Currently the Note to Section 34(3) states that: Annual financial statements prepared under this section may be either General-Purpose Financial Reports or Special Purpose Financial Reports as defined by the Australian Accounting Standards Board.

These Accounting standards are the ones to be applied to Tier 1, Tier 2, and Tier 3 buildings. (i.e. buildings with 10 or more lots).

Today almost all OCs prepare *Special Purpose Financial Reports* to meet their obligations. Given the nature of OCs as not for profits this is not unreasonable. But the Australian Accounting Standards Board (AASB) is abolishing that class of reports. This will require all OCs with 10 or more lots to move to a more onerous and expensive *General Purpose Financial Reporting Standard*.

This will impose a significant cost burden on all OCs with no demonstrable benefit in terms of reporting to OC members given their size and operations as a Not for Profit.

Remedy:

- i The Note following Sect 34(3) is removed from the Legislation.
- ii The appropriate level of reporting is defined on the Regulations and make it clear that Special Purpose Financial Reports can still be prepared as they do not need to be reported to ASIC as a Regulator. But rather to be prepared in a form defined by the Director.
- iii Using Section 200 of the OC Act the form of the Financial Accounts for each Tier could then be published by the Director.

This would deliver reporting standards aligned with the specific needs of an Owners Corporation and its complexity based on size.

Insurance Section 65 of the OC Act

Whilst past reforms sought to tackle commissions etc in relation to insurance outside of that there are some key issues that need to be addressed with respect to Insurance.

Sect 65 Valuations

This is a key input to the insurance premium process. Currently Sect 65(2) of the OC Act specifies a 5-year interval between valuations in all building.

But in Tier 1 and Tier 2 buildings 5 years between valuations is too lengthy a period given the risks from underinsurance arising from construction cost inflation in a long period. In a full replacement event in years 4 and 5, even if an insurer applies CPI to the base figure, a building is likely to be under insured as construction costs have consistently outstripped the *all groups CPI* seasonally adjusted measure published by the ABS over several years.

If a building is under insured in the event of a claim the shortfall in funding the replacement of the building needs to be made up by all owners based on lot liability. Separately it also leaves all lenders on lots in the property with a potential exposure.

Remedy:

For Tier 1 and Tier 2 buildings Sect 65(2) valuations should be obtained at least every 3 years to reduce the risk of under insurance.

Who undertakes Section 65 Insurance Valuations especially in Tier 1 and Tier 2 buildings

The second issue in relation to Sect 65(2) reinstatement/replacement valuations is the skill and qualification basis of the party undertaking the work particularly Tier 1 and Tier 2 buildings where complexity of construction and therefore accurate replacement cost valuation is vital.

Currently valuers and real estate valuers put themselves forward to undertake this work. They are unlikely to possess the skill set needed to perform the task in complex buildings. A valuer can advise on the market valuation of the asset for lending/borrowing purposes, (i.e. a valuer focuses on an asset's financial value.)

But that is an entirely different valuation model and skill set needed to assess the cost to demolish and rebuild the building. The appropriate skill set in complex buildings are those held by Quantity Surveyors who specifically qualified in this function and specialise in advising on the cost to design and construct. (i.e. a quantity surveyor focuses on the cost of its construction and ongoing asset costs).

Remedy:

For Tier 1 and Tier 2 buildings Sect 65(2) valuations should be provided by a Quantity Surveyor registered with the Victorian Building Authority. This should be inserted either into the Act or in the Regulations.

The firm retained for this work should be retained to prepare the Maintenance Plan required under Sect 36(1) for a Tier 1 and Tier 2 building. Again, this could be inserted by way of Regulation.

Management of Finances held on Trust (Sect 122(2))

Wording in the 2021 amendments was introduced to make it clear that an OC's funds were held on Trust and were not part of the assets of an OC Manager.

The use of the word "Trust" is misunderstood by some OCs that the Funds managed by the OC manager are in a Trust Account. This is not the case.

The size of funds held in an OC banks accounts, particularly in Tier 1 and Tier 2 buildings with both Maintenance and Operating levies will frequently exceed \$millions. This money is exposed to the control systems of the OC manager. Whilst they may have systems in place there is no protection against fraudulent misuse of these funds particularly if the perpetrator is a director of the OC manager.

Existing OC insurance policies and OC Manager insurance policies are ineffective to cover the full loss of funds by an OC. Further the insurance policies of an OC do not provide for this loss.

At present there is no comprehensive view on the total Funds held and managed by OC managers across the Victoria. The total volume of funds under management undoubtedly runs to the \$billions and growing. Accordingly, it is a potential honey pot for fraud.

Remedy:

There is a strong case for tighter regulation of funds under management by an OC manager as agent for the OC and increased OC Management Company insurance cover to cover this risk.

Asset Registers (Sect 144j) and Asset Register (Sect 67k) are different registers: Confusion needs to be clarified (Q2)

Section 144(j) refers to a Register of Assets and Liabilities. That is an accounting concept. Unfortunately, this can be confused with a "Asset Register" required to be provided under Section 67(k) of the OC Act. In a company major assets would be held on the Balance Sheet. But the ownership structure of an OC as a collective means that the OC as an entity does not own the assets it merely manages them on behalf of the collective group.

The intent of Section 144(j) needs to be clarified by Regulation. Logically the only Asset of an OC is Cash from fees. The assets referred to in Sect 67(k) are the major items of plant equipment needed to be included in a Maintenance Plan but are not held on a Balance Sheet as they are "common property" collectively managed by the OC.

Remedy: There is a clear case for the confusion to be clarified either by Regulation or by the Director using their Powers under Sect 200 of the OC Act.

Should changes be made to better support the uptake of electric vehicle charging stations, the installation of fibre internet connections and/or improve owners corporation experiences with embedded networks? (Q44)

Embedded Networks (Q44):

There is a clear issue confronting an OC which wishes to exercise a power of choice and opt out entirely from the Embedded Network arrangements in place in a building. Aside from unwinding its contract arrangements with an Embedded Network Manager there is a significant penalty arising under the Distribution Code and the Victorian Service and Installation Rules (SIR).

The Code and the SIR enable a Distributor to treat every customer option out as a “New Connection” and require re-metering. This can add up to \$2,000 per lot (fees and electrical contractor costs) should an OC wish to terminate the Embedded Network Arrangement. This is a loophole in the regulatory framework that needs to be closed.

Legacy impact of Developers holding 99-year leases over electrical infrastructure

At the initial meeting of the Owners Corporation some Developers enter 99-year leases for key elements of the electrical infrastructure in a building that then enable them to be the interface with an embedded network manager. This lease is via a special purpose vehicle they control which may receive a trailing commission from the sale of electricity. The effect of these arrangements is that they eliminate the ability of any owner in a building to opt out of the embedded network or for the OC to access the infrastructure without their approval. That may even include installing EV infrastructure unless they provide the infrastructure. The OC is effectively tied into contracts relating to the Embedded network.

Remedy:

1. The Minister for Energy and Resources will need to Issue a Ministerial Order under the Electricity Industry Act closing the loophole exploited by Distributors defining exiting an Embedded Network as a “New Connection”. This could be supplemented by setting the fee for this form of “New Connection” at Zero\$.
2. It is imperative that Government identifies a mechanism to unwind unconscionable arrangements that have tied OCs into 99-year leases over key electrical infrastructure so that owners and an OC can exercise their power of choice.

The installation of fibre internet connections (Q44)

The Telecommunications Act already provides for any provider to have access and install equipment on common property. Some may not wish to do this because of cost. Even the NBN may take a similar view.

Remedy:

Accordingly, no action is required

Topic 2: Short-stay accommodation

General Comments on this Topic.

Southbank3006 as a community group has an aim to bring a diverse community together breaking down the barriers created in vertical living in the most densely populated post code in Australia. We strive to be solutions focussed on Liveability solutions and redefining how we approach issues to open space and traffic management to encourage social and community development.

One of the consistent themes that people say impacts on their livability when asked why they joined SB3006 is “Short Term Accommodation”.

Short Stay letting impacts the lives of residents across Tier 1 buildings in Southbank. Aside from the breather created by Covid restrictions short stay operations have grown especially that managed by “industrial operators” operating across multiple platforms (i.e. AirBnb and Stayz and Bellla Stayz).

The City of Melbourne estimated in September 2023 that 14% of the housing stock across the Municipality was part of a Short-Term letting arrangement.

One of the consistent themes that people say impacts on their liveability when asked why they joined SB3006 is “Short Term Accommodation”.

The response of the State over the years, particularly the 2018 reforms on this issue has been flawed. Influenced by romantic ideas promoted by accommodation platforms of a struggling individual with a spare room or sharing with a “local family”. More recently their marketing has shifted to offering an “Experience”. Unfortunately, the “experience” of owners adjacent to a short stay apartment being rented by “industrial operator” is a painful nightmare.

We are aware of 2-bedroom apartments where 14 people have been found on a Saturday night or a 4-bedroom apartment with a planning approval for 8 people being advertised to sleep 14 people and up to 40 people partying over a long weekend

The reality is that Short Term Renting has morphed into industrial scale letting operations.

The 2018 reforms have had minimal impact on the lived experience. Efforts by Council and Owners Corporations over the years have been stymied by “sharp lawyers” manipulating a judicial system fixated on administrative procedures rather than addressing the fundamental social issues at stake and protecting the livability of residents.

If we are serious about addressing access to housing in areas like Southbank and Docklands, then unlocking the 14% of stock tied up by Short Term operators and releasing this into the market for the purpose for which these properties were planned and built is key. Reform would deliver the owners of this rental stock more secure long-term rentals which are closer to the market and ensures the asset is professionally managed and maintained.

Southbank3006’s calculations, based on the information published by the Council, a Short-Term industrial scale operator in Southbank with 50 properties arbitraging the rental market by entering a 12-month lease and then subleasing the same property for short term rentals could be making a gross profit of \$22.5k per week based on current rents in the area. This impact on the rental market is driving up rents for others, leaving many struggling to find accommodation close to where they work, and reportedly leading to overcrowding in smaller apartments with the number of residents exceeding the design and occupancy certificates.

If 14% of the housing stock in Southbank is caught up in short term accommodation, potentially this has withdrawn 1,600 apartments from housing in the area. Using this stock as a surrogate for hotel accommodation impacts on the projections that developers have about market demand, and calls into question the planning approvals on which developments were based. That is, it was built to provide permanent housing stock not a surrogate for hotel accommodation. Short term accommodation then is a major distortion in the operation of an efficient property market for everyone.

Need to rebalance Individuals Property Rights V Collective Responsibility and OC Members rights to Quiet Enjoyment. The so-called contribution to the Victorian economy touted by operators and platforms ascribes Zero cost to the impact on other apartment owners and OCs. By valuing the impacts on an OC and adjacent owners at Zero every study of Short Stay's supposed economic benefits to the Victorian economy is founded on a set of lawed economic assumptions. They are mere puffery designed to put *"lipstick on a pig"*.

It is instructive that Southbank3006's membership overwhelming state that the number one reason they join the Residents Group is the impact on liveability of Short Stay accommodation in Southbank.

Response to Questions for consultation

Are the 2018 changes to the Owners Corporations Act regarding short-stay accommodation meeting their objective of managing guest behaviour? Please share any relevant examples or experiences. (Q7)

The 2018 has had little impact on remedying the impact of short stay behavior patterns in Tier 1 and Tier 2 strata buildings across Southbank.

The 2018 legislation was founded on a flawed model of regulation incapable of address the problem which inquiries leading up to it identified. It is post-factum regulation inappropriate to addressing the impacts of Short Stay in a Tier 1 or Tier 2 Strata building. It tries to redress a wrong after the event and does not prevent harm in the first instance.

Redress models of regulation are only effective as the penalties they can impose. A further weakness is that they become legalistic and bogged down in "procedural fairness". An owner suffering a "party central" short stay adjacent to their lot on a weekend wants immediate relief and action not some delayed process which may take weeks or months before their grievance is addressed.

Most OCs and owners have long given up any thought of seeking redress using the 2018 amendments. Unfortunately advocates of Short Stay point to the lack of actions as evidence that Short Stay is not impacting owners or OCs. That of course is pure sophistry.

Are early signs indicating that the 2025 rules are effective in reducing the need to rely on the 2018 rules? Please share any relevant examples or experiences. (Q8)

It appears that the number of OCs that have been able to successfully pass short stay rules to provide any meaningful comment. The issues relating to the 75% threshold seem to be dominant in conversations with OC committees. That is people are giving up before even attempting change.

What other changes are needed to better manage short-stay accommodation in strata developments? (Q9)

A model rule needs to be inserted into the Regulations to provide every OC with the same provisions to limit and manage Short Stay accommodation. Because each OC must draft a Rule this not only increases legal costs but increases the likelihood that rules will be challenged at VCAT and over time having the intent of the legislation progressively watered down through VCAT legalism as has happened in the past. A model rule overcomes that. It worked for Smoking so it can work for Short Stay.

The Principal Place of Residence (PPR) provisions require clarity as to how an OC is to assess what is a PPR if an OC needs to determine whether an owner is in breach of a Short Stay rule before it proceeded to VCAT. Unfortunately, the Land Tax Act 2005 is inadequate to this task. Including a Definition of PPR for the purposes of the Model Rules in the OC Act Regulations would assist.

The penalties regime that VCAT can impose for a breach have to be sufficient that an operator just doesn't view them as a cost of doing business. That is the revenues they receive for breaching a law far outweigh any monetary penalty.

The speed to obtain a VCAT order needs to be within days not weeks or months after the breach event.

What are the early indications of how the 2025 rules are working in practice to help owners corporations manage or restrict short-stay accommodation? Are they appearing effective and enforceable, or do owners corporations still need to rely on the 2018 rules? For example, are there challenges in determining whether the principal place of residence requirement applies to a lot? Please provide examples. (Q45)

Whilst the 2025 amendments put beyond doubt the ability of an OC to adopt a rule to better manage Short Stay accommodation the early indication is that they will have limited application. This arises from the 75% threshold test required for a Special Resolution needed to give effect to the 2025 reforms.

As detailed in response to Q46 below the hurdles imposed by the special resolution test are so significant that most will either fail or chose to avoid failure by not even attempting to seek to restrict short stay accommodation.

Because each OC must draft a Rule this not only increases legal costs but increases the likelihood that rules will be challenged at VCAT and over time having the intent of the legislation progressively watered down through VCAT legalism as has happened in the past.

Remedy

The most cost-effective solution is to insert into the Model Rules a common rule for all OCs and thus enable those who wish to encourage Short Stay accommodation to pass a special resolution to **Opt Out** to enable Short Stay in their building.

How is the 75% special resolution threshold working in practice for owners corporations which want to restrict short-stay accommodation? (Q46)

We have detailed at length in Topic 7 the systemic flaws in the Design of the current 75% threshold for a Special resolution. In summary the flaws in the Special Resolution legislative framework are so severe as to erect significant barriers for most Tier 1 and Tier 2 OCs to give effect to the new powers afforded to manage Short Stay accommodation.

Flaw No 1 in the Design of the existing Voting System – Non-Participation is counted as voting

These rules, by their design effectively empower the minority to the detriment of the majority. This arises because those who choose not to participate are over empowered.

It is assumed that those who do not vote are voting NO to a proposition. Whilst nonparticipation may be a conscious choice in the main it reflects either indifference, or because they cannot participate for a variety of reasons. (e.g. they do not receive the papers because they live overseas. This is why we offer postal and absentee voting in Parliamentary elections. It is a flawed assumption to ascribe their actions with implicit power of voting NO.

Flaw No 2 in the Design of the existing Voting System – Section 89B (2) is flawed - The Quorum

Having a primary decision rule that 50% of the Owners must participate as a gating decision for a meeting or a ballot is a significant hurdle not found in NSW, WA, or SA. Again, a 50% quorum rewards nonparticipation. In other jurisdictions the quorum is determined by the number of people attending the meeting either in person or by proxy. Thus, nonparticipation is not rewarded.

Flaw No 3 in the Design of the existing Voting System – Section 97(1) and 97(1A) and Interim Resolutions are contradictory.

These sections apply different tests to determine if an Interim Special Resolution can be applied. Having different tests for the same purpose means that the law is rendered effectively useless.

Whilst both 97(1) and 97(1A) require a quorum Sect 97(1A) essentially empowers a single owner (i.e. 1) to control the outcome of a resolution even if 74.9% of owners voted in favour of it. This is a perverse position.

The psychological barrier impacts

These are created by a 75% threshold in the Special Resolution tests are significant. In an OC this is characterised by:

- i **A Low perceived probability of success.** This is because the high thresholds required for a Special Resolutions success is balanced against the lower than expected payoff for the same amount of work. The mental calculation is that getting that many people to agree will take too much time, effort, and negotiation.
So, people disengage before trying (“why bother if it’s unlikely to pass?”).
- ii **The most likely outcome in putting a Special Resolution forward today is a LOSS.** Therefore, Loss aversion comes into play. Committees wish to avoid the potential embarrassment, wasted effort, or political cost of failure. These loom larger than the potential gain of success.
- iii **It shifts motivation** from “let’s give it a go” to “don’t even start” created by the high bars required by a Special Resolution.

These psychological barriers have and will continue contribute to the low take up of OCs passing rules to address Short Stay accommodation in 8 months since passage of the legislation empowering OCs to act on this matter.

A Ballot is also flawed given the Quorum and Administrative time constraints.

Even with a Ballot the hurdles to pass a Special Resolution are excessively high. 50% of all owners need to vote and vote YES. The second barrier is the administrative deadlines imposed. There are only fourteen Days allowed between dispatch of the papers and their return. When there are high numbers of non-resident owners, many of whom are overseas, this poses an insurmountable logistics problem. Again, this process unfairly ascribes non-participation as a NO vote.

If the 2018 provisions are retained, how could they be improved to make them less burdensome for owners corporations to use? (Q47)

We have set out in response to Q7 the inherent flaws in the design of the 2018 reforms. Any reforms to them need to simplify the process, lessen the burden of proof needed for an OC or an owner to prove harm and increase the penalties on operators and platforms.

Topic 3: Financial hardship

Response to Questions for consultation (Q10, Q12, Q13 Q49)

When you buy a Strata Property you become part of a Collective. You have not become a member of a Cooperative, a shareholder in a Company, or a member of an Association. Every individual has a responsibility to the Collective Good and that relates to the maintenance and operation of the common property. That is the Common Good takes precedence it is a collective and in that it has a unique place in our organizational forms something that many struggle with in understanding.

The proposition about Financial Hardship:

- i Impacts on an OC's finances
- ii Impacts on an OC's ability to borrow for key works including sustainability and EV
- iii Confuses an OC, which is a not-for-profit entity with a for profit business.

Australian Financial Services Authority (AFSA) and Commonwealth Attorney General's reforms need to be allowed to work

AFSA the Australian Government agency responsible for the regulation of the personal insolvency (bankruptcy) reports² that the profile of a typical debtor in the insolvency system is:

A typical debtor profile in the personal insolvency system



Male, 25 to 44 years old from New South Wales, Queensland, or greater Melbourne.

A renter with a typical loan size of less than \$50,000 and small saving buffers.

Working as a technician, trader, labourer or administrator in construction, health care and social assistance, logistics or retail trade industries.

AFSA data indicates that owners of properties in strata buildings are outliers in the system and that the reasons for people entering bankruptcy are complex and involve many issues. They are not unidimensional and frequently impacted by other social issues including gambling and substance dependency.

AFSA has in place a *Vulnerability Strategy* for individuals facing financial hardship and are working with community agencies and other stakeholders to enhance this strategy.

Further the Commonwealth Attorney General is progressing a range of reforms to personal insolvency. Amongst the reforms is increasing the minimum threshold from \$10,000 to \$20,000 and applying annual indexing to that threshold.

These reforms, coupled with AFSA's work on a Vulnerability Strategy, will afford individuals facing financial hardship better protection than seeking to shift responsibility onto Owners Corporations and their Committees. That is the reforms that NSW pursued have been overtaken by events at Commonwealth level. These should be allowed to develop before the Victorian Government complicates matters and potentially creating a raft of unintended consequences for all owners in Strata.

² Page 9 AFSA *State of the Personal Insolvency System 2023/24*

The system is working well at present.

OC's already work with individuals in buildings on a case-by-case basis to address arrears and all owners are advised of the ability to enter a payment plan if facing financial difficulty. There is no evidence that they act in a capricious or arbitrary manner. In fact, their collectivist structure means that they work with each other to resolve issues when they become known.

The existing frameworks have many checks and balances in them before matters even appear at VCAT much less end up in a bankruptcy petition or a Sheriffs order. These latter events are the extreme outliers not the norm.

Who are problem non-payers? Q48, Q51

The evidence around OCs in Southbank and Docklands is that most long-term bad debtors involve overseas owners frequently with unoccupied apartments. Being able to move on this cohort and obtain court orders is a last resort as it is an expensive and lengthy process but is the only path that resolves debts which this group of owners view payment of OC fees is an optional expense.

The second cohort involves investor owners with a real estate agent involved but the letting agreement has all rents directed to the owner. This direction is used as a mechanism to bypass the provisions in the OC Act that would hold the Real Estate Agent liable for payment of the fees from the rents they receive. Again, overseas owners are overrepresented in this group. **This practice needs to be addressed by the Review and the relevant Regulators of Real Estate Agents and OCs.**

Cost of Living arguments and Affordability

It is claimed that these reforms are needed to address a "cost of living" issue and housing affordability. Whilst cost of living pressures have been real for many people it is wrong to base public policy on an assumption that "cost of living" is a to address a structural failure in the economy then to avoid entrenching a "right" such as the one being proposed is to insert a sunset clause on its operation. Government has available to it better and more targeted measures to address "cost of living" issues for all Victorians. Since these are directed and budget funded they can be varied as the wider issue of cost of living is addressed via economic and wage growth. **An OC is not a substitute for an income security program.**

What the utility sector experience teaches us as a lesson for Strata and OCs Q12

The experience in the utility sector is that retailers now assume that 5% to 10% of their customer base will seek to have a "payment plan" and claim financial hardship. The regulatory framework governing them, including punitive penalties for refusal, mean that any person who calls and states they are facing financial hardship is automatically granted a payment plan. They do not even need to adhere to that plan and can seek a further plan generating a perpetual loop of "never never".

An OC as a small not for profit body unlike a for profit business cannot sustain such practices unless it smears the burden across all lot owners. This is a function of its collective structure.

Impact on other owners and renters needs to be considered before embarking on this policy: Q12, Q49

- i. First there is the smearing impact of an OC having to budget a bad debt provision based on other industries of 5% to 10%. This will drive up the fees for all owners and has the potential to increase the number of "financial hardship" claims.
- ii. Increasing OC fees on investor owners of lots will flow into increase rents for tenants. That needs to be factored into any thinking as a significant unintended consequence that will further impact housing affordability for those targeting to move from renting into home ownership.
- iii. The OC needs to assess "financial hardship and report on it to an AGM. This has the potential to develop a name and shame event with an OC committee being asked to justify its actions by the collective group.

- iv. The OC act provides that any owner has access to all OC records. These are not owned and controlled by the OC Manager. Having a formalized process will mean that the personal details and financial position of individual owners will be available to all their neighbours.

Ability to borrow for important measures including sustainability items and EV charging will be at risk. Q12, Q49

- i. Many OCs need to take out a loan to fund critical work/improvements often a large unforeseen cost (e.g. Removing Cladding) or want to install a sustainability element such as EV charging.
- ii. Lenders effectively secure their loan by relying on the cash flow from OC Fees as the security. This means that they can provide loans at lower rates (8% to 10% at present) than classic unsecured financing which would attract rates around 20%+.
- iii. But once Financial Hardship can be claimed by any party (as occurs in energy retailing) then the security of the loans is undermined
- iv. In this environment either the costs of borrowing will be increased, or the worst-case loans could fall into default because an OC cannot meet its repayment obligations.
- v. Once an OC is in default the lender will seek to have recourse against all OC members given its collective structure.
- vi. Accordingly Financial Hardship will impact on OC borrowing ability and costs of borrowing are major unintended consequence of this policy push by the parties saying it is necessary.

In summary:

- i. This proposition to require an OC to offer Payment Plans needs to be rejected. The reasons that people enter bankruptcy are complex and often linked to wider issues such as gambling and substance dependency.
- ii. The unintended consequences of the proposition to require an OC to offer Payment Plans are significant as are the costs to most owners. An OC is not a substitute for an income security program nor a lender.
- iii. If pursued the proposition to require an OC to offer Payment Plans poses an existential risk to the viability of the operations of Strata schemes and all Owners Corporations.
- iv. There are more appropriate policy tools and programs available to Government to deliver “cost of living” measures.
- v. The measures being put in place by the Commonwealth and AFSA’s “Vulnerability Strategy” need to support by the Victorian Government and allowed to work.

Topic 4: Manager Conduct

General Comments on this Topic.

OC Management Company Issues

Industry Consolidation via vertical and horizontal integration – Transitioning from a cottage Industry

This industry has over the past 15 to 20 years witnessed a seismic growth as apartment development and the amount of housing stock that is covered by Strata laws has grown. All demanded the provision of OC Management services. What started as small family run practices based around accounting or real estate have morphed into businesses with large employee numbers and significant turnovers.

Whilst much of this has been attributed to organic growth in the addressable market there have also been significant consolidations or “roll up” activities. These have also involved horizontal integration with movements into facilities management, fire services, insurance brokering, property management and the emergence of Developers as Facility Managers.³

Whether any of these mergers were submitted for any form of notification under Section 51 of the Competition and Consumer Act is not known. What has emerged some large-scale businesses cross selling services.

The growth of the industry has never been subjected to any competition assessment and the media events in 2024 highlighted the absence of a wider view on the industry and the effect on OC members. From 1 January 2026 the ACCC will have a better Mergers framework which hopefully will capture events in this industry. But the damage of the past still needs to be addressed. We have set out a couple of the issues in response to the Review’s Topic 4 Manager Conduct item.

Conflicts of Interest continue to exist used as a mechanism to bypass OC Contract Terms

The Tier System is the key: - This was a significant change by recognising the requirements of different sized communities required different approaches to management and operations. Further it paved the way to recognise the reporting and operational matters of OC varied according to size. That is a one size fits all approach on every matter is not fit for purpose.

Expanding use of the Tier System to cover more mandated items especially for Tier 1 and Tier 2 buildings. This group of more complex buildings need to be considered. This particularly relates to governance and arrangements relating to service providers in Tier 1 and 2 buildings.

Clear Structural Separation is required in key functions in Tier 1 and Tier 2 buildings. (Q6 & Q52)

Frequently OC managers are part of a group that offers multiple services and cross sells these to the Owners Corporation and to individual owners in a building. Part of this is historical and a function of failures in or avoidance of the Merger’s protocols in Section 51 the Competition and Consumer Act.

It is not uncommon in Tier 1 and Tier 2 Buildings for facility management to be bundled with OC management as a package to an OC. This allows the OC manager to sell its OC management services as a loss leader and take higher margins on the facility management component as it is an unregulated function. So long as it is made clear with a disclosure to the OC under Sect 122A the OC managers statutory obligation has been fulfilled.

³ For example, we are aware that there exist entities that combine the functions of Builder, Developer, OC Manager, Real Estate sales and letting agents, Insurance Brokers offering a service web that an OC owner may never escape.

By linking both contracts and by having contracts of varying terms they can deliver a potential lock in strategy in terms of OC management contract. Separately it also opens a loophole to avoid Sect 122B with commissions from suppliers channelled via the Facility Manager entity.

Blending of these services in Tier 1 and Tier 2 buildings exposes OCs to poor financial control mechanisms with the same entity responsible for incurring expenses and approving them with no separation. In larger properties with \$million dollar + budgets having the same party responsible opens the door to potential significant fraud that will be hard to identify or control until well after the fact. It is necessary to have fiscal controls in place, and this is best achieved by structural separation.

Blending of functions imposes additional costs if termination of the OC Manager and Facility Manager is required. Paying out the Facility Management contract which may have some years to run potentially erects a financial penalty/roadblock in replacing the OC Manager.

The remedy:

Introduce a definition of the term “Facility Management” in the OC Act.

Consider requiring registration framework of firms offering Facility Management Services under the OC Act

Immediately require strict structural separation of Facility Management services and OC Management services in both Tier 1 and Tier 2 buildings where the damage is greatest. This could be achieved by requiring OC Committees to appoint separate entities to deliver these Functions. That is an OC Manager cannot deliver Facility Management services.

Regulate strict prohibition that in Tier 1 and Tier 2 OCs that the parent or an associated child of an OC Manager cannot operate an entity that provides Facility Management services to Tier 1 and Tier 2 Owner Corporations.

OC Managers operating as Real Estate and Letting Agents – significant conflict of interest:

There should be a strict prohibition on OC Managers being part of a parent entity where there is an associated entity holding a Real Estate Agents license. Again, Sect 122A of the OC act affords a convenient out.

This raises potential conflict of interest between the OC Management function representing the interests on OC members and the commercial interests of the Letting Agent and Sales Agency functions being offered by the same group to investor owners in a building.

In the case of a Breach by a tenant how does the OC manager enforce the breach notice against itself. So called “Chinese walls” do not suffice nor trust me statements. The ACCC has been rigorous in many industries in requiring strict structural separation a similar position should become part of the mantra in the design of reforms of the OC Act.

Remedy:

A strict prohibition in Tier 1 and Tier 2 OCs that the parent or an associated child of an OC Manager cannot operate a real estate letting or real estate sales agency if an entity in the group is the OC Manager for the Tier 1 or Tier 2 OC.

Developers appointing themselves as Facility Managers at the Initial Meeting to manage the Defects period.

A recent trend has been the practice of Developers, who may also be the builder to appoint themselves as the Facility Manager at the Initial OC Meeting. This places them in the position of being able to manage the Defects/Warranty period to their own advantage. This practice will become more common when Developers will need to provide a Bond following changes to the Building Act. By positioning them in the position to manage and sign off the defects they can create a backdoor loophole to the Victorian Building Act’s proposed Developer bond processes. This will be especially pernicious when the Builder is the Developer and when special purpose vehicles

are created for both functions leaving them able to be placed into external administration at will leaving owners and the OC with limited recourse.

The Remedy

There major lacuna needs to be addressed by Government in both the OC Act and the Victorian Building Act by the Victorian Building Authority (VBA).

Contract Terms with an OC should include a Governance Framework covering: (Q14, Q16, Q52, Q55)

- i Separation of OC Management and Facility/Building Management Functions.
- ii Strict compliance with prohibition of commissions in both Facility/Building Management as well as in OC Managers. So contractually include the provisions of Sect 122B of the OC Act in contracts with the parties providing these services. Breach of Sect 122B needs to be identified in the Contracts with both OC Managers and Facility/Building Managers as a matter that will lead to immediate "Termination Without Cause".
- iii Details of all Facility/Building Management sub-contractors and suppliers to be tabled at every OC Committee meeting.
- iv All contracts with suppliers more than \$1,000 require approval by the OC Committee before they are entered into by either the OC Manager or Facility/Building manager.
- v Payment – Separation of ordering and payment approval processes needs to be mandatory.
- vi Payment approvals from OC bank accounts require Chair or another OC member to authorise prior to payment.
- vii Insurance – A competitive process for the broker appointment who is paid a fixed fee by the OC for their services and the Client/Contractor relationship is established between the Broker and the OC so any commissions with the insurer are transparent to the OC as required by Corporations Law.

Improvements to OC Management and servicing of OC Committees

Contract should include Key Performance Indicators (KPIs) (Q55)

Inclusion of Key Performance Indicators, linked to fee increments is key to continuous improvement in service delivery. In Tier 1 and Tier 2 buildings to improve Committee performance. It would assist if the Director of Consumer Affairs provided a guideline for OC Committees and OC Managers as a *A Framework for Key Performance Indicators f(KPIs) or OC Managers*.

A suggested KPI guideline could cover:

The suggested KPIs for the following areas:

- i Accounting & Finance including creditor payment targets
- ii Fee Notices
- iii Debt Collection:
- iv Correspondence:
- v Committee Meetings:
- vi Annual General Meetings:
- vii Communication with Committee and OC members (Response times to calls and emails)
- viii Working with the Building Manager
- ix Breach notices:
- x General: Meetings with Officer in Effective Control with Committee
- xi Records Management

Performance Reporting:

OC Manager will report the KPIs defined in this contract at each Committee meeting in the following format:

KPI	Met	Not Met	Comments

Impact of non-performance

If between 2 and 4 KPIs not met because of OC Manager controllable actions in a Reporting Period*, excluding KPI's related to the Annual General Meeting 5% of the monthly contract value for that Reporting Period is at risk

For more than 4 KPIs not being met because of OC Manager controllable actions in a Reporting Period*, excluding KPI's related to the Annual General Meeting 10% of the monthly contract value for that Reporting Period is at risk.

For KPI's relating to the Annual General Meeting not being met because of OC Manager controllable actions 5% of the annual contract value is at risk

The total amount of all penalties in a contract year will not exceed 15% of the annual contract value.

Earn back of penalties:

In the 3 Reporting Periods **following** a penalty being payable, if all KPIs are met, the penalty will not apply. There is no retrospective consideration of prior performance where all KPIs are met, i.e. credits will not accrue for all KPIs being met in a Reporting Period, except in the case of an earn back being applicable.

Committee Papers need to be in a standardised format

In Tier 1 and Tier 2 buildings to improve Committee performance **it would assist if the Director of Consumer Affairs provided a guideline for OC Committees and OC Managers on effective Board Papers Decision making.** This should cover off the style, format and content of papers submitted to the Board.

This approach seeks to ensure that the material put before the Committee is concise, substantiated by facts, realistic about risks and argued within the framework of the OC strategic policy agenda. A suggested guideline for OC Papers might include the following elements:

- i Subject/Title and Agenda Item No
- ii Executive Summary and high-level summary of financial implications if any
- iii Background Outline to issue being addressed
- iv Key Issues and Financial Implications to be considered
- v Options available to committee
- vi Recommendations
- vii Decision required
- viii Any detailed papers and supporting analysis in support should be labelled and appended as Attachments and referenced at the Key Issue to which it refers as to where the attachment
- ix Papers should not exceed 2 to 3 pages in length.

Training for Committee Members (Q7)

There is an urgent need for Training for Committee members via online training modules. The Governance Institute and the Australian Institute of Company Directors recommend this for directors of both companies and not for profit entities.

For all OCs all members elected to an OC committee should be required to undertake an induction program targeted at imparting a knowledge of the OC Act, the role of committees, governance and compliance, should be undertaken in the 29-day period following an AGM. If they fail to complete the training, then their appointment to the OC Committee should not be confirmed.

For Tier 1 and Tier 2 buildings additional modules should be completed in budgeting, purchasing, insurance and risk management within 2 months of the AGM. These should be optional for Tier 3 and 4 building committee members.

Should Contracts be brought within the umbrella of Australian Consumer Law (Q 57)

Bringing both Contracts for the provision of both OC Management and Facility Management within the ambit of Australian Consumer Law (ACL) will provide OCs and their Committees with important protections against both Misleading, Deceptive, and Unconscionable Conduct.

More importantly it will provide better protection against unfair contract terms and the ACL's restrictions on unfair contract terms in standard form contracts for small businesses. This is particularly important in OCs as it affords a level of protection against the self-renewing nature of OC management contracts and the prohibitive costs when appointing a new OC Manager. These provisions, and claims to ownership of records by OC Managers should fall within the ambit of the ACL provisions if it is applied.

Bringing the service contracts for OC Management and Facility Management within the ambit of the Australian Consumer Law (ACL) would provide a level of support to OCs when appointing a new manager to minimise the costs in obtain records when moving to a new OC manager. It would ensure that the intent of the 2021 amendments on the term of appointment of an OC Manager is not thwarted by inclusion of “unfair contract terms” and provide access to regulators to intervene on behalf of an OC. Even the prospect that a regulator may intervene will alter behaviour.

Options to help ensure fees are fair, consistent, and transparent across similar Owners Corporations (Q 59)

The simplest option is for the Director to undertake industry surveys to benchmark fees within Tiers. This would increase transparency in the industry. The benchmarks should include a description of the services being delivered for the level of fees. The industry suffers from a race to the bottom as OCs seek lower fees. That “cheap and cheerful” approach delivers many of the problems OCs complain about their managers in the “pay peanuts and get monkeys”. The Director should educate OCs that the time taken to service typical OCs by Tier.

A useful model for the Review to look to is the key role APRA plays in benchmarking superannuation fund fees and performance through its Annual Performance Test and its MySuper Heatmap. Both are designed to increase transparency, and hold super funds accountable for poor performance, and ultimately improve member outcomes.

Labour Market Issues and an Australian Qualifications Framework – A major Lacuna (Q58)

There is little or no labour market planning being undertaken despite the significant growth in the number of apartment buildings and hence the number of OCs requiring management.

Although the barriers to entry in this workforce are low, given the lack of any credentialism, the increase in demand for skilled staff is going to drive increases in wages feeding into OC Management Company costs. That must in turn flow into higher fees or insolvencies of OC managers.

There is a clear need for labour market planning for the industry and along with that to be instituted including skills training and CPD for OC managers. OCs and OC Management is a Regulated Industry, but it appears to be the only regulated industry where there is no Qualification Framework. Absence of industry specific qualifications and training and ongoing CPD is a glaring omission given the impact on the lives of 1m+ residents in strata in Victoria and the \$b value of the assets impacted by the actions of OC Managers. How this situation has been able to evolve in incomprehensible and needs to be addressed urgently with Training Authorities.

Records Management and Transfer (Q6, Q57)

Because OC Managers mistakenly view the records of the OC as their property, they view them as an asset they can leverage if their contract is under review. They set this up by:

- i Use of bespoke finance packages offered by third parties which have no simple migration Application Program Interface (API).
- ii Use of incompatible records management systems

- iii Filing of records (minutes and key papers) on their IT infrastructure means that the cost of churning to a new manager can not only be expensive in terms of expense but also in terms of time and loss of data/records.

Existing OC Managers contracts usually contain a significant \$ cost they can levy and OC on either their contract not being renewed or their termination.

Remedy

- i. These practice needs to be addressed by the review.
- ii. Separately a prudent OC committee of Management should set up its own document retention systems outside of the OC Managers. The license for the OC Committee's systems should in in the OC's name to avoid Consideration⁴.
- iii. Bringing OC Management contracts within the Australian Consumer Law would provide a level of support to OCs when appointing a new manager to minimise the costs in obtain records when moving to a new OC manager.

Strata Commissioner V Director Consumer Affairs and how to fund (Q8)

The benefit of a Strata Commissioner is that there will be a resource dedicated to addressing the policy and regulatory requirements of OCs. How that is resourced and which Department that is in is key if it is to be a step change from the Director of Consumer Affairs.

A Strata Commissioner should be part of a Ministry aligned with what it is seeking to regulate. The logical fit is **the Ministry of Housing and Building** alongside the Victorian Building Authority. It would also bring together policy for multi-unit dwellings and single unit dwellings.

Funding for this new office via a levy on all OCs and on all OC Managers is a logical hypothecated revenue model. Setting it based on OC Tier levels for OC's and the number of each tier managed by an OC manager has some elegance to it.

⁴ Typical cloud-based services are those provided by BuildingLink and MyBos. Both enable storage of critical policies, documents, minutes, maintenance plans, insurance policies rules etc. and offer portals where all owners and residents can view these. They also offer direct communication channels by SMS and email to all owners so an OC Committee can communicate directly and speedily with all owners and residents without relying on the OC Manager. Social media platforms such as Facebook and WhatsApp require participants to voluntarily install an app on their smart phone do not provide the functionality required in an OC and contain inherent security flaws and thus should be avoided by OCs.

Topic 5: Non-Compliance & resolving disputes

Response to Questions for consultation

Enhancing Engagement and Transparency through specialist Cloud based Database Platforms and not social media is required (Q19)

Owners corporation committees are responsible for making decisions that affect the day-to-day operations, governance, and overall wellbeing of residential buildings and their communities. Ensuring that these decisions are clearly communicated to lot owners and residents is fundamental to building trust, fostering engagement, and maintaining a harmonious living environment.

Cloud-based services such as BuildingLink and MyBos have revolutionized the way owners corporation committees communicate and interact with their communities. These platforms serve as secure, centralized hubs where essential policies, meeting minutes, maintenance schedules, insurance documentation, and community rules are stored and easily accessible to all registered owners and residents. Rather than relying on traditional methods—such as notice boards, posted letters, or the intermediation of an Owners Corporation Manager—committees can now deliver information directly, instantly, and efficiently.

A key advantage of platforms like BuildingLink or MyBos is their comprehensive suite of communication tools. Committees can send SMS and email notifications to all owners and residents, ensuring important decisions, updates, or urgent announcements reach everyone in real time. For example, when the committee decides on new building policies or schedules essential maintenance works, these updates can be broadcast immediately, reducing confusion and improving compliance. Separately if there is an interruption to services etc residents can be advised of the event and the actions being taken to remedy and anticipated time of an outage.

Furthermore, these platforms facilitate two-way communication. Owners and residents can log issues, ask questions, or provide feedback directly to the committee via the portal. This not only streamlines the process for reporting problems or voicing concerns but also ensures that every interaction is logged and archived, creating a reliable corporate history and a transparent record of all communications.

Compared to social media platforms like WhatsApp or Facebook, which require voluntary participation and lack the security and functionality necessary for organizational management, BuildingLink or MyBos and similar applications are purpose-built to support the unique needs of owners corporations. They safeguard privacy, enable facility bookings, and help committees maintain clear lines of communication without depending on third-party managers or user consent to join informal groups.

In summary, committees that leverage cloud-based services like BuildingLink and MyBos and similar applications are better equipped to communicate decisions, engage with stakeholders, and ensure that everyone in the community is informed and empowered. These platforms foster transparency, accountability, and a sense of collective responsibility, strengthening the fabric of strata living.

Developers appointing themselves as Facility Managers at the Initial Meeting to manage the Defects period. (Q26)

A recent trend has been the practice of Developers, who may also be the builder to appoint themselves as the Facility Manager at the Initial OC Meeting. This places them in the position of being able to manage the Defects/Warranty period to their own advantage. This practice will become more common when Developers will need to provide a Bond following changes to the Building Act. By positioning them in the position to manage and sign off the defects they can create a backdoor loophole to the Victorian Building Act's proposed Developer bond

processes. This will be especially pernicious when the Builder is the Developer and when special purpose vehicles are created for both functions leaving them able to be placed into external administration at will leaving owners and the OC with limited recourse.

The Building Act Reforms are critical going forward

Construction Defect issues result from failures in compliance and enforcement by the VBA. During construction. Logically the reforms to the Building Act are designed to address these going forward. OCs are ill-equipped to address defects especially during warranty periods. There are a range of tactics that builders can employ to delay, deflect, deny, and derail construction defects until both warranties and liability periods expire.

Topic 6: Collective sales

General Comments on this Topic.

If the Review is looking for guidance and models on this subject it could look to the provisions in the Corporation Law with respect to Court Approved Schemes of Arrangement and separately the Compulsory acquisition tests for other Mergers and Acquisitions to move post 90% control.

Separately it might look to the social costs flagged in the Victorian Government's program of high-rise tower knock down and replacement for guidance that this is a policy area that is multifaceted in its costs.

This is not a pressing item for the review. Over time it may become one, but it should be shelved in favour of more pressing issues of reform.

Topic 7: Voting processes

General Comments on this Topic.

The Special Resolution provisions in the Act are poorly drafted, are premised on flawed tests and logic, and create a level of complexity not evident in other jurisdictions particularly WA, NSW, and SA. We have set out how this can be addressed. (See Figure 1 below for the complexity of the law today)

The Proxy provisions contained in Section 89d and Regulation 8A(a) are badly drafted, contain undefined terms, and lack some procedural fairness. Coupled with the drafting of the Special Resolution provisions they make the passage of Special Resolutions almost impossible. (See Figure 2 below)

Response to Questions for consultation

Are the current voting processes clear, effective, and fair for all lot owners? What is working well and what is not working well? Please provide specific examples. (Q32)

We have set out at Figure 1 below the maze of business rules that need to be followed for the successful passage of a Special Resolution under the OC Act as drafted. This demonstrates the difficulty of passing a Special Resolution and demonstrates that what is in operation today is NOT working well

The current law has an implicit assumption that in an OC voting is compulsory voting when voting is optional. This is a fundamental design flaw which leads to perverse outcomes. It needs to be addressed. By applying super majority voting and assuming compulsory voting when it isn't compulsory therefore those who are indifferent can overwhelm a majority who do participate. That is why we fine people for not voting in parliamentary elections.

The existing law contains several tests. Namely:

A quorum to be present or to vote by ballot, AND

75% vote YES, OR

50%, vote YES and no more than 25% vote NO to achieve an interim resolution in a ballot, OR

50%, vote YES and 0% vote NO to achieve an interim resolution in a General Meeting.

This has created hurdles that are almost insurmountable in large Strata Schemes.

There are inherent flaws in the Act with respect to the passage of Special Resolutions

Flaw No 1 in the Design of the existing Voting System – Non-Participation is counted as voting

These rules, by their design effectively empower the minority to the detriment of the majority. This arises because those who choose not to participate are over empowered.

It is assumed that those who do not vote are voting NO to a proposition. Whilst nonparticipation may be a conscious choice in the main it reflects either indifference, or because they cannot participate for a variety of reasons. (e.g. they do not receive the papers because they live overseas. This is why we offer postal and absentee voting in Parliamentary elections. It is a flawed assumption to ascribe their actions with implicit power of voting. NSW, SA, and WA have all addressed this issue in their Strata voting processes on Special Resolutions whereas Victoria's laws fail spectacularly.

Flaw No 2 in the Design of the existing Voting System – Section 89B (2) is flawed - The Quorum

Having a primary decision rule that 50% of the Owners must participate as a gating decision for a meeting or a ballot is a significant hurdle not found in NSW, WA, or SA. Again, a 50% quorum rewards nonparticipation. In other

jurisdictions the quorum is determined by the number of people attending the meeting either in person or by proxy. Thus, nonparticipation is not rewarded.

Flaw No 3 in the Design of the existing Voting System – Section 97(1) and 97(1A) and Interim Resolutions are contradictory.

These sections apply different tests to determine if an Interim Special Resolution can be applied. Having different tests for the same purpose means that the law is rendered effectively useless.

Both require a Quorum and Section 97(1) requires 25% to vote NO,

BUT

Section 97(1A) assumes 0 NO Votes effectively voiding Section 97(1).

What Parliament's intentions were in the drafting of Section 97(1A) is unclear but what is in place today is unworkable by virtue of the Quorum test being applied to both. (i.e. Flaw No 2 in the design of the System).

Section 97(1A) essentially empowers 1 owner to control the outcome of a resolution even if 74.9% of owners voted in favour of it. This is a perverse position.

A Ballot is also flawed given the Quorum and Administrative time constraints.

Even with a Ballot the hurdles to pass a Special Resolution are excessively high.

- 50% of all owners need to vote and vote YES.
- The second barrier is the administrative deadlines imposed. There are only fourteen Days allowed between dispatch of the papers and their return. When there are high numbers of non-resident owners, many of whom are overseas, this poses an insurmountable logistics problem. Again, this process unfairly ascribes non-participation as a NO vote.

A Better and workable mechanism for Special Resolutions without the logic flaws of today's:

- i. The Quorum Test is deleted.
- ii. The Quorum becomes the number of people present in person or by proxy. (In one form or another this is the Quorum Test applied in WA, NSW, and SA).
- iii. The Decision Rule for a Special Resolution becomes 75% of those present by Lot Entitlement need to vote YES to a Special Resolution which becomes an INTERIM SPECIAL RESOLUTION.
- iv. The existing administrative processes with respect to INTERIM RESOLUTIONS are then applied. This ensure that those who did not participate can signal their disagreement the provisions of Section 97(5) would remain in place to protect "nonparticipants'" rights. But only those who did not participate in the meeting or the ballot would have this right. This is a change to the position today but would ensure "property rights" of all individuals are protected.

This is a practical and workable solution mirroring other jurisdictions and still more conservative than what applies in NSW, SA, and WA today.

This Mechanism has an appropriate balance of rights but will allow OCs to pass Special Resolutions needed to facilitate a wide range of matters critical to:

- i Upgrading and improving common property to protect assets and building values.
- ii Keeping OC Rules relevant and modified to accommodate changes in any aspect of State or Commonwealth Legislation
- iii Responding to VCAT or Court decisions,
- iv Borrowing for major repairs or repair defects that may emerge many years after practical completion where the borrowing required exceeds annual levies, and
- v Enabling sustainability upgrades.

Has the new rule allowing “interim” resolutions made owners corporations operate more effectively and efficiently? Or has it caused other problems, like owners being less involved? Q33

The current system means that when a decision needs a very high level of support – like 75% approval – people often see it as too hard to achieve. They assume it will take too much time and effort to convince enough people, and the chances of success seem low. As a result, no one starts the process, and the decision never gets put to a vote. Surely that is not what good governance and management of common property requires. It demands active and proactive management. Creating speed humps delivers inertia and the breakdown of social cohesion in the group and the physical fabric of the assets that constitute common property and the common good.

Setting a high hurdle requiring 75% of all owners impacted by a decision having to agree results in strategic abstention and coordination failure when the cost of mobilising a winning coalition appears prohibitive, rational actors generally prefer inaction.

The psychological barrier impacts

The psychological barriers created by the current hurdles in the Special Resolution tests are significant. In an OC this is characterised by:

- iv **A Low perceived probability of success.** This is because the high thresholds required for a Special Resolutions success is balanced against the lower-than-expected payoff for the same amount of work. The mental calculation is that getting that many people to agree will take too much time, effort, and negotiation. So, people disengage before trying (“why bother if it’s unlikely to pass?”).
- v **The most likely outcome in putting a Special Resolution forward today is a LOSS.** Therefore, Loss aversion comes into play. Committees wish to avoid the potential embarrassment, wasted effort, or political cost of failure. These loom larger than the potential gain of success.
- vi **It shifts motivation** from “let’s give it a go” to “don’t even start” created by the high bars required by a Special Resolution.

These psychological barriers will contribute to the low take up of OCs passing rules to address Short Stay accommodation in 8 months since passage of the legislation empowering OCs to act on this matter.

Even though Southbank3006’s membership overwhelming state that the number one reason they join the Residents Group is the impact on liveability of Short Stay accommodation.

What impact, if any, have changes to voting processes had on meeting participation and the efficiency of decision-making? (Q34)

In terms of participation, they have had no effect. In terms of efficiency of decision making they have been a backward step. This is because they are fundamentally flawed in their logic and tests.

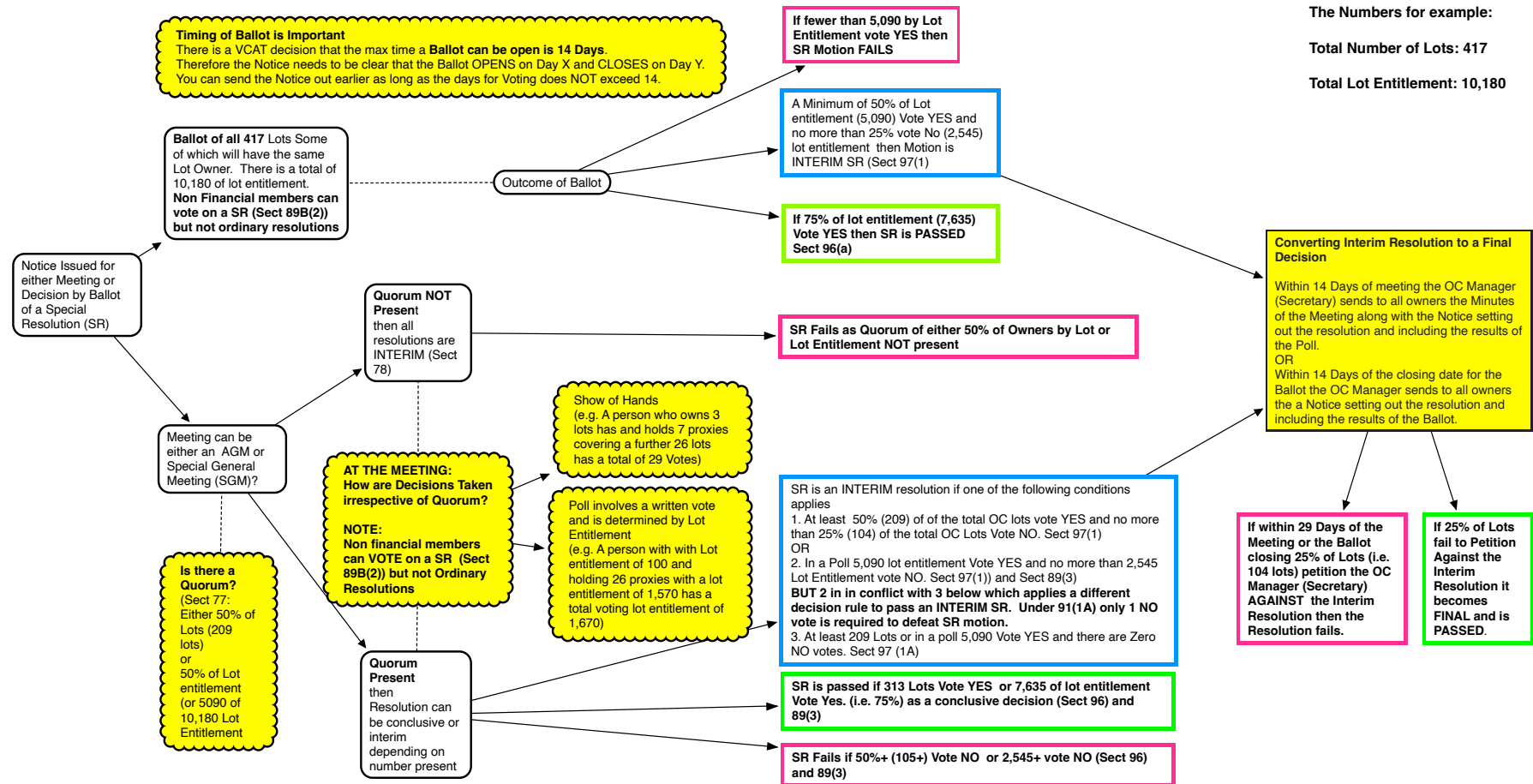
In NSW, SA, WA there are significantly more efficient decision-making tests for Special Resolutions, and they still ensure “property rights” are protected. Their approach to forming a Quorum promotes participation whereas the approach in Victoria rewards nonparticipation.

Figure 1 on the next page

The current business rules decision tree necessary to pass a Special Resolution.

Figure 1

How a Special Resolution Passes or Fails Outline of the Business Rules



Have the limits on the number of proxies a person can hold stopped some individuals having too much influence over decision-making? (Q35)

1. What the limits achieve is almost to limit the ability of nonresident owners having their interests represented in decision making.
2. They have eliminated the so called “proxy farming” behaviour by a small number of actors.
3. Arguably there were more refined tools that could have been used in achieving that outcome eliminate any chance of large number by prohibiting certain classes from holding proxies. (e.g. Real Estate or Letting agents and their associates or OC Managers and their associates. These need to be investigated.
4. It is instructive that in Public Companies require no such controls like Section 89(D).

Are the current limits on proxy votes achieving their intended purpose? Are there any practical limitations or unintended consequences? (Q 72)

1. Arguably they have resulted in fewer people participating at Meetings by Proxy. That means that their interests are not being represented. This is especially the case for owners who cannot attend a meeting no matter how it is held because they are not-resident in Victoria and most likely overseas. In larger Strata schemes this may be most owners.
2. The unintended consequences of Sect 89(D) and Regulation 8A(a) are that they stymie decision making especially or the passage of important Special Resolutions.
3. The laws in force require significant reform to be fit for purpose and to enable efficient decision making. The problems with the current Section 89(d) and Regulation 8A(a) of the Owners Corporation Act are:
 - i. Poorly drafted.
 - ii. Overly complex
 - iii. Contain several undefined terms. (e.g. Dealing with Rounding, What is a Family Member)
 - iv. How proxies received by an individual more than the 5% rule are to be treated. That is which proxies are valid and which ones are not.
 - v. At present Owners are not by law informed in the Notice of Meeting of the maximum Number of Proxies they may hold.
 - vi. Owners providing Proxies may provide a proxy only to find that because their proxy exceeded the maximum that the proxy holder may hold. They are then disenfranchised as their participation ruled invalid. That is their rights to be present at a meeting have been removed by administrative fiat.

We have set out in Figure 2 below the 5 Steps that have to be met to comply with Section 89 (D) and Regulation 8A(a). This demonstrates the undefined terms and how an OC should address the holes in the legislation.

Remedy

1. Section 89(D) needs to be amended to increase the current cap from 5% to 10%. That will enhance decision making but at the same time control the bad behaviour and practices excesses that the 2021 amendment was seeking to control. For example, in a Strata with 165 Occupiable Lots the maximum number of proxies a person may hold would rise from 8 to 16. Well below the threshold to gain “effective control” of a meeting, which was the intent of the 2021 amendment.
2. We have also suggested appropriate fixes to address the undefined terms including treatment of Rounding that is underpinned by applying the mathematical convention of the Nearest Integer

Rule, and a definition of Family Member as defined in Section 3A of the Magistrates Court Act 1989. These are set out in Steps 3 and 4 in Figure 2 below.

3. The Rules of the Meeting accompanying a Notice of Meeting also need to include how the decision rules relating to Section 89(D) and Regulation 8A(a) are going to be applied. This is in Step 5 in Figure 2 below.
4. Finally, there is the issue to address how owners who have been disenfranchised because their proxy breached the 5% for an individual can be addressed from an equity and fairness perspective.

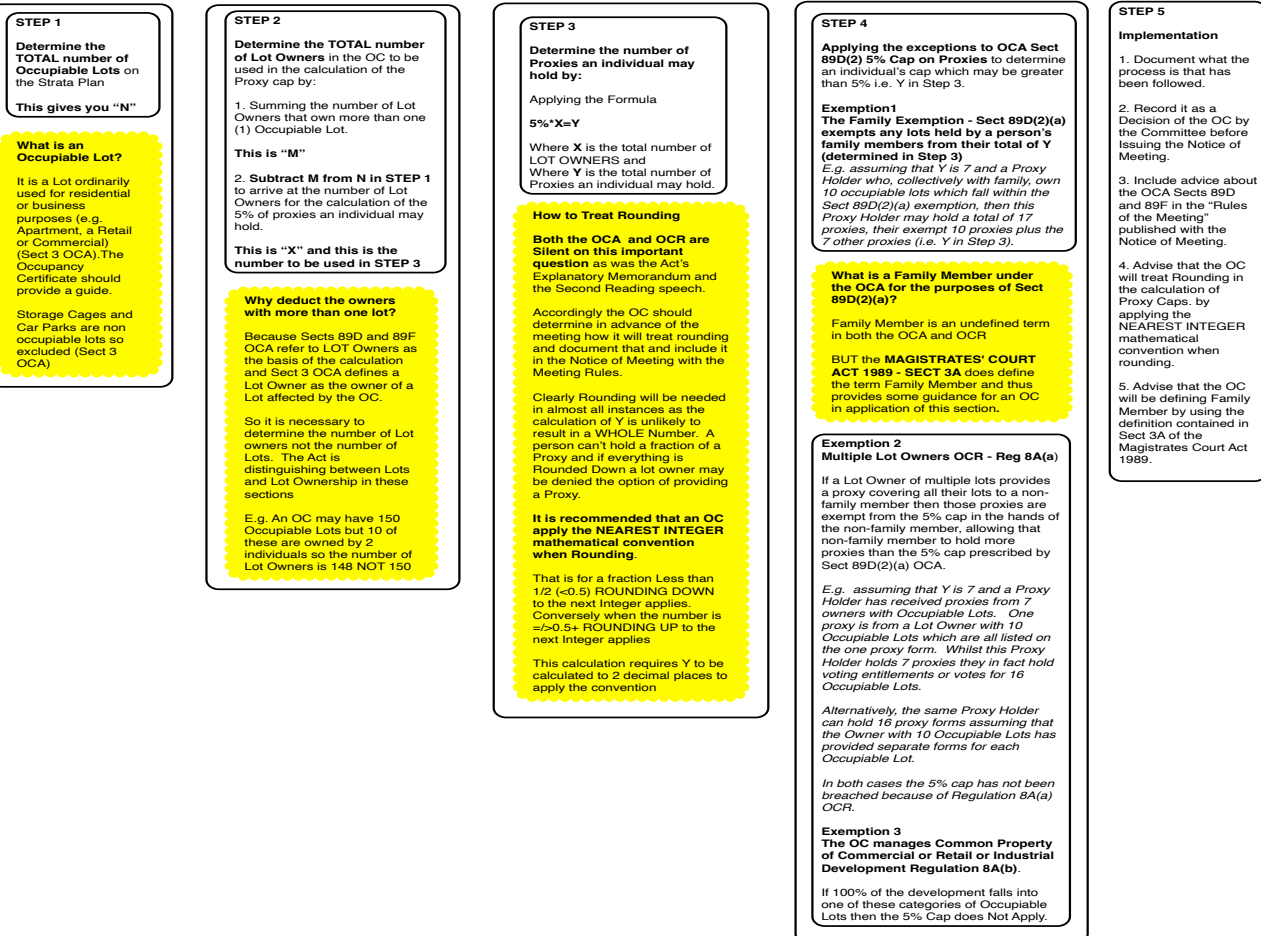
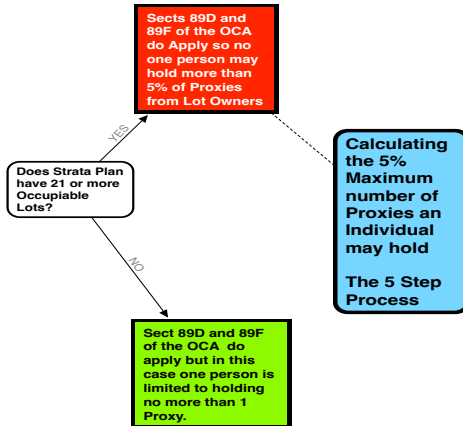
Figure 2 on the next page

The Business Rules required to implement Section 89B and Regulation 8A(a) with respect to Proxies at present.

Figure 2

OCA Sect 89D 5% Proxy Business Rules
Also applies to Sect 89F Power of Attorney Voting

OCA - Owners Corporation Act 2006
OCR - Owners Corporation Regulations 2018



Do the current voting provisions support effective decision-making in owners corporations, and are there any improvements you would recommend? (Q 73)

We have set out above in response to Q4 and Q5 and Q60 what improvements are needed to achieve effective decision making in OCs especially in relation to passing Special Resolutions.