



Commissioner for
Better Regulation
Red Tape Commissioner

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23 July 2018

Mr Simon Cohen
Director
Consumer Affairs Victoria
121 Exhibition Street
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Dear Mr Cohen

Simon

REGULATORY IMPACT STATEMENT FOR THE OWNERS CORPORATIONS REGULATIONS 2018

I would like to thank the staff of Consumer Affairs Victoria (CAV) for working with the Office of the Commissioner for Better Regulation on the preparation of the Regulatory Impact Statement (RIS) for the proposed Owners Corporations Regulations 2018, which are proposed to replace the current Regulations that sunset on 3 December 2018.

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RISs prepared in Victoria. As you know, the Commissioner's role is to advise on the adequacy of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 20 July 2018 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

Background

The *Owners Corporations Act 2006* (the Act) provides the legislative basis for regulating owners corporations in Victoria. It provides for the management, powers and functions of owners corporations, as well as mechanisms to resolve disputes.

'Prescribed' owners corporations are required to meet certain requirements set in the Act or Regulations. The threshold for this prescription is specified in the Regulations. At present the threshold is set at owners corporations of more than 100 lots or levy annual fees of more than \$200,000 in a financial year.

The Owners Corporation Regulations give effect to the Act by setting:

- the threshold for 'prescribed' owners corporations
- fees, costs and charges;
- classes of prescribed owners corporations;
- standards for financial statements and maintenance plans; and
- model rules for owners corporations.

Consumer Property Law Review

In 2015, the Victorian Government announced the Consumer Property Law Review, a process which is still under way. The *Owners Corporations Act 2006* will be considered as part of that review and there may be consequent implications for the Owners Corporations Regulations.

Given this, the CAV makes it clear in the RIS that it considers the sunseting review of the Regulations on the basis of the current Act.

Options considered

In this sunseting RIS, CAV has addressed setting the threshold for 'prescribed' owners corporations and its concomitant requirement for:

- audited financial accounts;
- maintenance plans;
- professional indemnity insurance for owners corporation managers;
- standard accounting of financial statements; and
- fees for registered owners corporation managers.

A review of the fees that owners corporations can charge for provision of an owners corporation certificate has not been undertaken for this RIS. CAV explains that this is because these fees were updated in 2014 following a specific fees RIS, and appear to be operating well. Similarly, a review of fees payable by registered owners corporation managers has not been undertaken, as a review may be warranted in light of the Consumer Property Law Review. This seems appropriate as potential fee types may change as part of that process.

The proposed Regulations

The proposed Regulations largely maintain the existing Regulations, and introduce a number of changes to address specific issues including:

- ***requiring paid owners corporation managers to have professional indemnity insurance of \$2 million or more*** to ensure negligence claims can be met;
- ***broadening the scope of the model rules***, so that there is a higher standard level of governance for owners corporations; and
- ***providing the ability for owners corporation committees to remove a member who is regularly absent from meetings***, to enable the committee to progress its work efficiently

Although the RIS contains some discussion about whether the threshold for being a 'prescribed' owners corporation should be changed, CAV is of the view that any such changes should be considered in the context of the ongoing Consumer Property Law Review.

Estimated costs and benefits of the Regulations

RISs are required to estimate the costs and benefits of regulatory impacts compared to the 'base case' where no regulations apply.

CAV estimates that the total costs attributable to the proposed Regulations are \$2.03 million per year on owners corporations and managers, (\$19.51 million in net present value terms over 10 years). 65 per cent of this cost is the requirement for prescribed owners corporations to prepare maintenance plans, while 22 per cent is for prescribed owners corporations to audit their financial accounts. The data used to estimate these costs are based on insurance quotes, CAV data and stakeholder input.

While not easily quantifiable, the benefits of maintenance plans and audited financial results include reducing loss to lot owners from fraud and other financial mismanagement, ensuring that repair and maintenance is done efficiently, and spreading maintenance costs more fairly across successive owners.

Transitions, evaluation and future work

The proposed Regulations are planned to commence on 2 December 2018. CAV has outlined its plans to explain the proposed new requirements to affected stakeholders. No significant changes regarding compliance and enforcement are anticipated to CAV operations.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation