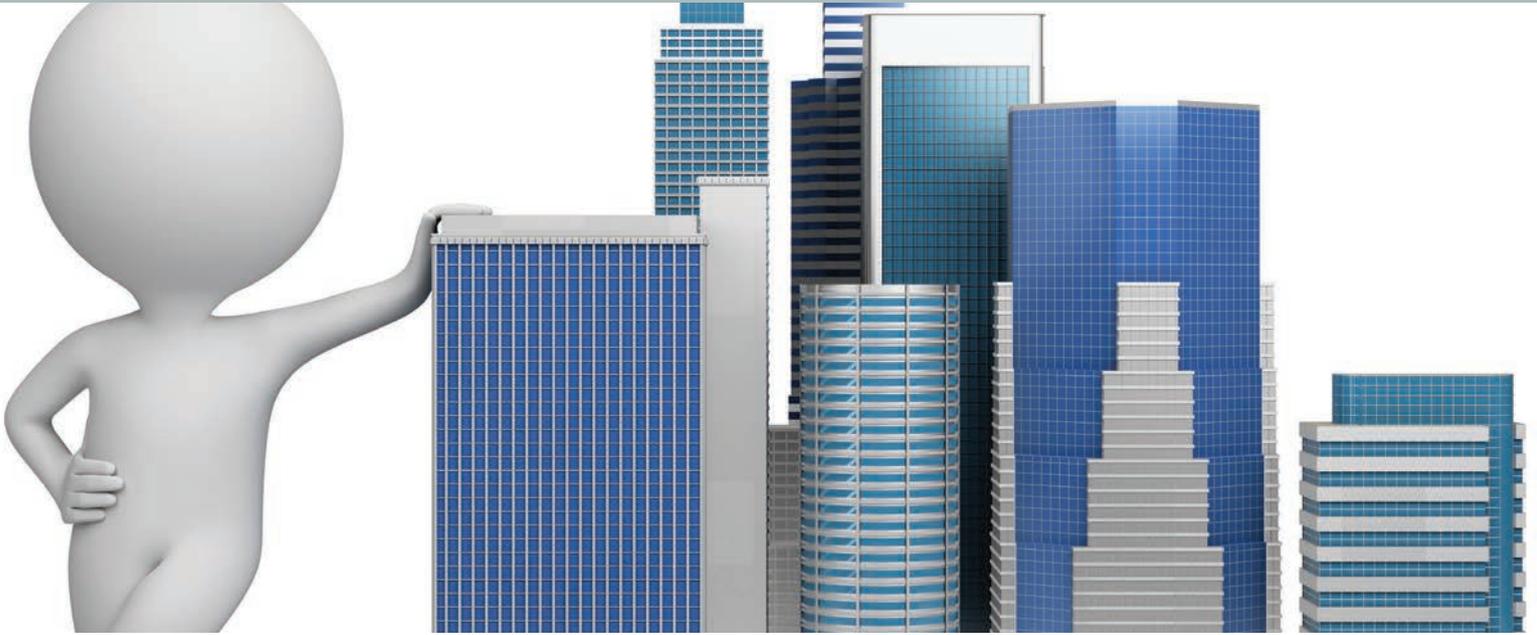


Property Law Update

November 2014



Stricter guidelines for 'Owners Corporations' in Victoria

Planning on reviewing your management contracts? Now is the time. New guidelines to increase the accountability and standards of owners corporation management are set to commence early 2015.

Following a public review by the Victorian State Government, the new *Consumer Affairs Legislation Further Amendment Bill 2014* ("**Bill**") contains significant amendments to the *Owners Corporation Act 2006* that strengthen the ability of owners corporations to deal with unsatisfactory owners corporation managers ("**managers**") and promote better owners corporation management.

ENHANCED REGULATIONS

The regulation of managers will be enhanced in the following ways:

1. People guilty of an offence involving fraud, dishonesty, drug trafficking or violence punishable by a term of imprisonment for three months or more will be ineligible for registration as a manager. This is consistent with the management regime under the Estate Agents Act 1980.
2. Managers' contracts will be limited to three year terms. There will be the capacity to prescribe exceptions in the regulations, for example where it is not commercially possible to attract a suitable manager in the absence of a longer term; however it will likely be difficult to satisfy an exception.
3. Managers' contracts must not:
 - (a) Require an owners corporation to take any step, other than obtaining a simple majority of votes, to remove the manager
 - (b) Include an option that allows the manager to renew the contract
 - (c) Require large owners corporations to give three months' notice, or smaller owners corporations one month's notice, of the intention to revoke a manager's appointment
 - (d) Provide for automatic renewal if the owners corporation fails to give notice¹; or

¹note that where an owners corporation fails to give notice of its intention to renew a management contract, the contract will roll over and remain terminable by either party with one month's notice.



- (e) Restrict the ability of an owners corporation to refuse consent to the assignment of a management contract, other than a requirement that consent cannot be withheld unreasonably².
- 4. A manager cannot exert pressure to influence a vote or decision of an owners corporation.
- 5. Managers must disclose, in writing:
 - (a) Any conflict of interest in relation to contracts entered into by their owners corporation; and
 - (b) Any commissions and other benefits received under the contracts. There are associated annual auditing requirements.
- 6. Managers must take reasonable steps to ensure that goods and services procured by the owners corporation are sourced at competitive prices and on competitive terms.
- 7. Managers must report annually on receipts and disbursements of trust monies.
- 8. Managers must comply with a reasonable request from an owners corporation for copies of account statements from the prior three year period.
- 9. Trust monies cannot be pooled unless:
 - (a) The owners corporations are related and each has consented to the pooling; or
 - (b) The pooling is in a statutory trust account.
- 10. Building developers in control of an owners corporation owe a fiduciary duty to owners corporation members to act in the best interests of the owners corporation for ten years (previously five years). The definition of "control" has been amended to refer to the ownership of a majority of lot entitlements rather than a majority of lots, given voting power attaches to lot entitlement and not lot ownership.

NEW STATUTORY PROTECTIONS

Managers must be aware of the heightened standard of conduct required by the Bill. The Victorian Civil and Administrative Tribunal has a broad discretion to impose a civil penalty for a breach of any of the amendments under the Bill.

To prepare for the Bill, managers must systematically review their managers' contracts to identify whether the contracts comply with the Bill. After its commencement, there will be no grace period. It is vital that managers prepare for the commencement of the Bill as soon as possible. Similarly, owners corporations need to be aware of the new statutory protections available. Owners corporations should ensure that managers' contracts comply with the Bill so that their members receive the full protection of the improved management regime.

It is expected that the Bill will shortly pass its third reading in the Legislative Assembly. It would then commence operation by 1 April 2015.

Hunt & Hunt is well-placed to assist with any inquiries about the management of owners corporations.

Authors:

Andrew J Campbell, Lawyer
Tony Raunic, Partner

²the withholding of consent to the assignment to a full member of a professional body or association approved by the director of Consumer Affairs Victoria will be presumed to be unreasonable.

NATIONAL CONTACTS

Penny Cable Sydney
Rob Wilcher, Sydney
Mark Byers, North Ryde
Tony Raunic, Melbourne

Bill Hazlett, Melbourne
Egils Olekalns Adelaide
Paul Morris, Brisbane
Andrew Suttie, Brisbane

Darren Miller, Perth
Antony Logan, Hobart
Christine Osborne, Darwin