

Owners Corporation Bill Exposure Draft
Program Development and Evaluation
Consumer Affairs Victoria
452 Flinders Street
Melbourne Vic 3000



ACN 081 34227
ABN 36 081 348 227

Registered Office
55 Johnston Street
Fitzroy VIC Australia
Mail P O Box 234
Fitzroy VIC 3065
Phone (03) 9411 1444
Fax (03) 9416 051

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Dear Dr Cousins,

RE: OWNERS CORPORATION BILL EXPOSURE DRAFT

The Tenants Union of Victoria welcomes the opportunity to comment on the Owners Corporation Bill Exposure Draft.

Who we are

The Tenants Union of Victoria (TUV) was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist over 25,000 private and public renters in Victoria every year. Our commitment is to improving the status, rights and conditions of all tenants in Victoria. We represent the interests of tenants in law and policy making by lobbying government and industry to achieve better outcomes for tenants, and by promoting realistic and equitable alternatives to the present forms of rental housing and financial assistance provided to low-income households.

Tenants and bodies corporate/owners corporations

As a tenants advocacy group, our submission focuses on the relationship between owners corporations and residential tenants and how this should be mediated in legislation. We have made a number of submissions to Consumer Affairs Victoria (CAV) as part of the consultation process around this Draft Bill, positing options for appropriate and just law reform in this area. The Tenants Union believes that any law affecting tenants should function to protect their rights as consumers, and that their interest in their rented homes should be recognised both in law and policy.

Tenants residing in premises managed by bodies corporate have some of the same rights as owner-occupiers – for example, the rights to quiet enjoyment, to privacy, and to use common property. However, they cannot become members of the body corporate; they have no right to attend meetings, to receive the minutes of body corporate meetings, or to be otherwise privy to discussions at meetings that may directly concern their place of residence. Decisions and rules that affect the lives of tenants can be made or changed, without consultation or tenant input into the decision and rule making processes.

Despite the fact that the actions or (in some cases) inaction of bodies corporate can have a potentially deleterious impact on tenants, the relationship between them is substantially unmediated. Currently, the only provision that directly bears on this relationship is s 507 of the

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Subdivision (Body Corporate) Regulations 2001, which requires owners to provide a copy of the rules to tenants at the commencement of occupation, and copies of any new rules as soon as possible after they are made. It should be noted by that in many instances tenants are not given copies of the rules, even where their leases purport to bind them to those rules.

We note that tenant-body corporate disputes are not uncommon, and that it is likely that the number of disputes to will rise as households take up the option to live in the increasing number of apartment complexes being constructed. Specifically, our tenant advocates have represented a number of clients in disputes with bodies corporate in regard to the provision of utilities. Our work on these disputes indicates that the relationship between tenants and bodies corporate needs to be recognised and prescribed by legislation, so that tenants' rights as consumers of residential services are adequately protected.

The Owners Corporation Bill Exposure Draft

The Tenants Union supports a number of the innovations in the Draft Bill, in particular those provisions empowering tenants to make complaints and seek redress for alleged breaches of duty and disputes with owners corporations (see cls 10.1, 10.9, 11.1 and 11.2). However, we contend that further provisions should be included so that tenants' interests are protected more effectively:

Tenants to be provided with copies of rules

Clause 7.9 of the Exposure Draft currently provides that a copy of rules be provided to the tenant at the commencement of the occupation. While 'occupation' is not defined, a common usage reading of that expression would indicate that the commencement of occupation was the point at which the tenant moved in. Given that cls 7.10 and 8.4 require tenants to comply with owners corporation rules, we believe it is desirable for the owners corporation rules to be provided at the point at which the tenant signs the lease. This would allow tenants the opportunity to peruse the rules and make an informed decision about whether to commit to those rules before the lease is entered into. Accordingly, Clause 7.9 should be amended to clarify that the time at which the rules are to be provided to the tenant is the time at which the lease is signed.

As noted above, many owners (or their agents, where the rental property is managed by a real estate agent) are not providing tenants with copies of the rules, despite r 507 of the *Subdivision (Body Corporate) Regulations 2001* (the current equivalent of cl 7.9). This is despite many leases purporting to bind tenants to the body corporate rules. This situation will not be alleviated by the changes proposed by the Exposure Draft becoming law. We contend that a new provision should be included in the Bill, stating clearly that tenants (occupiers) are not bound by the rules of an owners corporation unless they have been provided with a copy of the rules at the point at which the lease was entered into or as soon as is possible after new rules are made or existing rules are amended.

Furthermore, to encourage owners to comply with the law, failure to provide a tenant with a copy of the rules at the point at which the lease is entered into and copies of amendments that are made from time to time should be made an offence punishable by a small fine. This kind of compliance regime exists in the *Residential Tenancies Act 1997*, where s. 66 requires owners (or their agents) to furnish tenants with a summary statement of rights and duties and contact details. Failure to provide this information results in a fine of 5 penalty units. We believe that the offence of failing to provide a copy of owners corporation rules to tenants should be included in the *Residential Tenancies Act 1997* rather than the Bill, because it pertains specifically to residential tenants. An appropriately drafted consequential amendment should be inserted into the final Bill to effect this change.

More active participation by tenants

Given that decisions and rules made by owners corporations impact on tenants, and cl 7.10 and 8.4 of the Exposure Draft purport to bind tenants to rules, we contend that tenants should be

permitted to engage with owners corporations more directly. Before being introduced into Parliament, the final Bill should:

- Require lot owners (or their agents) to provide tenants with copies of owners corporation meeting minutes, to ensure that tenants are informed about any issues and decisions that may impact on their place of residence;
- Entitle tenants to request a general meeting with the owners corporation to discuss matters impacting on their place of residence; and
- Entitle tenants to attend owners corporation meetings (without voting rights) to contribute to debate and discussion concerning their place of residence.

These inclusions in the final Bill will strike an appropriate balance between the right of owners to deal with their property through the owners corporation mechanism, and the rights of tenants to reside in accommodation where levels of amenity are maintained during the term of the lease. Empowering tenants to participate in the decision-making process may also have the additional benefit of minimising the potential for disputes between owners corporations and tenants.

Liability of occupier for fees and charges

Clause 3.7 provides that, where occupiers and lot owners have entered into an agreement rendering the occupier liable for payment of owners corporation fees and charges, the owners corporation may recover these monies directly from the occupier.

This clause is of particular concern because of its potential to unfairly increase the tenants' costs of residency. On its face, cl 3.7 would permit the inclusion of provision in a lease that rendered the tenant (as occupier) liable for the fees and charges levied by the owners corporation under Part 3 of the Bill. Currently, residential tenants are not explicitly liable for these expenses - landlords presumably factor in their body corporate liabilities when setting the rent. However, we note that the Owners Corporation Draft Bill applies to all premises, and that in commercial/non-residential lease agreements, it is customary for the tenant to pay the outgoing costs (which include body corporate fees and charges).

We believe that an unintended consequence of cl 3.7 may be to encourage owners and agents to include provisions in leases making tenants liable for owners corporation fees and charges, thereby increasing the residency costs of tenants in premises managed by owners corporations. This is manifestly unfair, as it creates two classes of tenant - those in property managed by an owners corporation and therefore liable for extra expenses, and those residing in other premises, where the owner is liable (subject to the *Residential Tenancies Act 1997*) for the ordinary and extraordinary costs of maintenance, repairs, insurance and similar. To avoid this, the Tenants Union recommends that either:

- (a) The *Residential Tenancies Act 1997* be amended to prohibit landlords from requiring tenants to pay owner corporations fees and charges. This could be effected by inserting a consequential amendment to that Act into the final Bill. The provision could be included with a number of other prohibitions on charges already listed in s 51 of that of the *Residential Tenancies Act 1997*; or
- (b) Clause 3.7 be amended to clarify that agreements between residential tenants and their landlords purporting to make the tenant liable for any owners corporation fees and charges are void.

The Tenants Union thanks Consumer Affairs Victoria for the opportunity to comment on the Exposure Draft of the Owners Corporations Bill. While we are pleased to note that a number of our previous recommendations have been incorporated into the Draft, we believe that inclusion of the amendments we have identified in this submission will more provide substantially better

protection to tenants as consumers of residential services, and improve their experience in the private rental market.

Please do not hesitate to contact the Tenants Union of Victoria on (03) 9411 1410 if you wish to discuss the issues raised in this submission further.

Yours Sincerely,

Rebecca Harrison
Research & Policy Worker
Tenants Union of Victoria