

OC law changes

CALAA & CALARA

Both the Consumer Affairs Legislation Amendment Act 2010 [CALAA] and the Consumer Affairs Legislation Amendment (Reform) Act 2010 [CALARA] are now law.

CALARA simplifies witnessing the use of the seal for owners corporation certificates, allowing the registered manager or the chairperson to witness its use as recommended by SCA (Vic). It clarifies that delegations to committees can be made by instrument or by resolution.

It also empowers VCAT to award a much broader range of costs to owners corporations and lot owners in disputes around arrears of fees – either directly or indirectly, including the costs of professional managers, and are not limited to costs incurred by a professional advocate. SCA (Vic) has won this social justice issue for OCs with the double whammy being removed - lot owners will no longer be out of pocket. SCA (Vic) had campaigned on this issue since the end of 2008.

Consumer Acts Amendment Act 2011

SCA (Vic) had two issues with the above legislative changes that have now been changed along the lines of what SCA (Vic) proposed. The government back flip to listen to SCA (Vic) is welcomed. The issues were about committees – delegation to committees, and proxies for committee meetings. The SCA (Vic) Policy Position, which covered these issues, had been advocated to a range of stakeholders including meeting with CAV to advocate these issues in Aug 2010.

Regarding delegation to committees, legislative changes would have meant that an instrument or a resolution is required to delegate to committees. Those legislative changes have now been amended back to the situation where the committee has all the powers automatically without the need to have an instrument or a resolution to delegate to the committee.

Regarding proxies for committee meetings, SCA (Vic) disagrees with the practice of allowing committee members to appoint proxies to represent them at a committee meeting in ones absence. Ultimately, changes at least restrict the practice via giving OCs the power to make a Rule.

There are other issues dealt with that CAV had sought SCA (Vic) views on. One is giving “standing” to individuals which is a very unwelcome change and the other deals with overseas lot owners which is a very welcome change.

The common law rule since *Foss v Harbottle* in 1843 was that in the case of a wrong to a company only the company itself could sue, not the individual shareholder-members of the company. The Corporations Act in 2000 modified this rule but until now, the OC Act had not modified this rule, meaning that individual lot owners had no “standing”, only the owners corporation did. Now the OC Act has modified this rule given the decisions in some recent VCAT cases. The government abrogated the rule so that anyone who can apply to VCAT has standing, because it was never their intention for it to be restricted in this manner. It's noteworthy that one of these decisions, speaking about Parliament's previous intentions, said “*The fact that such a statutory response similar to that in the Corporations Law was not included in the OC Act leads me to the conclusion that this was no mere oversight and that the rule does apply to owners corporations*”. However, the government has said that it was an oversight and that was not their intention.

SCA (Vic) position on this issue was:

- SCA (Vic) disagrees with giving ‘standing’ to individual lot owners. There should have been no change. The previous law was appropriate.
- The OC is the appropriate entity to sue after obtaining a special resolution. Changing it will lead to the perverse situation where s18(1) of the OC Act is easily overcome by the owners agreeing that one or more of the owners sue a third party instead of the OC suing the party – without the need for a special resolution.

- This is all notwithstanding the fact the previous laws, quite appropriately, did not prevent, in the case of a wrong to an individual lot owner, that lot owner suing.

Overseas resident lot owners that do not have a physical Australian address result in the problem of owners corporations not adequately being able to recover fees. The change should overcome problems with VCAT's rules surrounding service of documents by requiring absent lot owners to specify addresses in Australia, and provides an alternative mechanism for service where they have not complied.

The changes to strata laws by the Consumer Acts Amendment Act 2011 are now law. So, make sure you are now using the latest version of the Owners Corporations Act 2006, which is version 007, incorporating amendments as at 01/09/2011.