

**Review of the regulation of Bodies Corporate in Victoria  
Submission by St. Kilda Legal Service**

**May 2004**

---

Please direct any inquiries to:

St. Kilda Legal Service  
161 Chapel Street,  
St. Kilda, Vic.3182

Ph. (03) 9534 0777  
Fax. (03) 9525 5704

## About St. Kilda Legal Service

---

St. Kilda Legal Service was one of the first community legal centres (CLCs) established in Victoria in 1973. There are approximately 45 CLCs through out Victoria, which include both generalist and specialist centres. Generalist centres assist clients presenting with a broad range of legal issues, while specialist centres assist clients with legal issues concerning a particular area of law in which the centre has a specialist knowledge. The philosophy of CLCs is not merely to provide legal advice, but to empower people so that they can find ways of resolving their own problems in the future. Centres are dedicated to a preventative approach in solving client's problems and are actively involved in community development, education and law reform activities.

St. Kilda Legal Service is a generalist CLC that provides free legal advice, referral and ongoing casework, as well as being involved in law reform and community legal education activities. The Service is committed to providing free and accessible legal services to members of the community; to increasing the community's knowledge of their legal rights and responsibilities; and to redressing inequalities within the legal system through legal and social reform. The St. Kilda Legal Service is co-located with other services at the St. Kilda Community Centre, including the St. Kilda Financial Counselling Service, the Port Phillip Community Group and an outreach service of the Tenants' Union of Victoria.

Clients are often referred to St. Kilda Legal Service for legal advice and assistance with body corporate related disputes. The Legal Service provides casework support to people within our community who are unable to afford a private solicitor and ineligible for legal aid assistance, as is the case for this type of civil matter. Problems with bodies corporate have been a long-standing, reoccurring problem for many of the clients presenting at the St. Kilda Community Centre for both legal assistance and financial counselling. It is not unusual for clients to return to St. Kilda Legal Service several times over a period of years for legal advice and assistance regarding ongoing battles they may have with their body corporate.

The type of casework assistance that St. Kilda Legal Service currently undertakes to assist clients in resolving body corporate disputes includes giving legal advice, supporting clients to take their own action, drafting legal correspondence and negotiating on behalf of clients. Given the nature of legal casework that St. Kilda Legal Service undertakes in assisting members of its community with body corporate disputes, our Service is well placed to contribute to this review.

## **Dispute minimisation through information**

---

St. Kilda Legal Service supports steps to further improve legal information and education within the community on the law relating to bodies corporate. St. Kilda Legal Service has long advocated for the need to translate this complex area of law into plain English, resulting in the development of two publications, 'Common Ground' and the 'Complete Guide to the Law & Managing Bodies Corporate'. St. Kilda Legal Service facilitated the participation of clients in focus testing of these publications to ensure the content of the publications was relevant to body corporate members, legal concepts explained clearly and that the publications were user friendly.

Following the Legal Service's last submission to this review in November 2003, highlighting the need for additional information aimed at prospective owners when considering to purchase a property, we notice that such a booklet has since been produced by CAV - 'What to consider when buying a flat, unit or apartment'. Any additional information that is required to be disclosed to potential purchasers in the vendor's statement or attached to the body corporate certificate prior to sale can only make buyers more aware of the implications of living in a property managed by a body corporate.

Although information provision has improved in recent times with these publications there is still a need for additional legal advice and casework support services by someone with specialist knowledge. People still have queries not answered in these materials, need to discuss their individual circumstances (in some cases documents or correspondence need to be perused) and be advised by someone who can apply the existing law to their situation. This is the work St. Kilda Legal Service currently undertakes, relying primarily on volunteer lawyers to provide such legal advice, advocacy and support as well as ongoing casework (such as drafting correspondence on behalf of clients).

Clients seeking assistance from St. Kilda Legal Service in a number of instances have already sought telephone advice from CAV and may be more informed as to possible causes of action, however do not feel any better equipped to act on their own behalf. This is often due to an imbalance of power and resources with the other party who may be a body corporate manager or professional management company; they may be an individual in a dispute with the rest of the other body corporate members; the other party may be legally represented; and/ or they may have limited English. Many clients seeking legal advice and assistance from St. Kilda Legal Service on body corporate matters are aged pensioners from non-English speaking backgrounds.

Whilst expansion of body corporate information available can improve community awareness as to legal rights and responsibilities, this also results in more informed body corporate members wishing to enforce their rights under the law. A consequence of this, we predict, will be increasing demand on Community Legal Centres to provide legal advice and casework assistance to support such action.

This area of law is not a priority for St. Kilda Legal Service, however given the demand for such assistance in an area (cities of Port Phillip, Stonnington and Bayside) with increasingly more high-density housing developments being built and more of our community residing in properties managed by a body corporate it is a legal problem that our Service needs to address.

There is a need for specialist advice and casework support services, which are community-based and therefore easily accessible to members of body corporate communities. A government department that is centralised in Melbourne city, such as CAV, is not best placed to provide such services, particularly if the proposed model involves CAV playing a role in conciliation of body corporate disputes. This would potentially raise issues of conflict of interest and CAV would not be perceived as being independent by complainants in body corporate disputes.

***Recommendation:** Specialist legal advice, advocacy and casework support services, that are accessible, should be funded and provided for Victorian residents with a body corporate dispute to enable them to exercise their legal rights and responsibilities.*

## **Dispute resolution**

---

The focus of this review has been on examining various dispute resolution models and the main elements required of those models to be able to successfully resolve body corporate disputes that arise. St. Kilda Legal Service is well aware of the inadequacies of the current system, with few accessible avenues of redress for clients, essentially needing to seek Magistrates' Court orders.

The Legal Service's last submission to this review in November 2003 outlined difficulties most complainants face when pursuing litigation including the deterrent of legal expenses and being disadvantaged by not being legally represented, especially where English is not their first language. Therefore, St. Kilda Legal Service supports the introduction of a complaints and dispute resolution model that is easily accessible and inexpensive for those people living in properties managed by a residential body corporate.

Whilst St. Kilda Legal Service supports proposals to introduce a tiered dispute resolution process, we also believe that it is important to tackle the underlying cause of many body corporate disputes - poor communication between body corporate members and an inability to resolve disputes internally. Therefore, we support proposals to encourage bodies corporate to develop their own internal process for resolving disputes. To further support this we also suggest that a community development approach needs to be taken to promote social cohesion, reduce social isolation and improve relationships between residents living in properties managed by a body corporate.

Many of the clients seeking legal advice with body corporate disputes at St. Kilda Legal Service are on low-incomes, such as elderly pensioners, who have lived in their dwelling for considerable time, sometimes decades. The presenting disputes often relate to being unable to afford large lump sum special levies imposed, in addition to annual contributions, for alterations, renovations and refurbishment of common property, which are sometimes purely cosmetic and unnecessary, but can amount to \$3,000 to \$4,000. These type of disputes result directly from gentrification of the Port Phillip and Stonnington areas. In fact a municipal council (City of Port Phillip) concerned by the impact of gentrification on the local area has recently hosted a series of community forums encouraging civil dialogue on this issue.

A negative impact of gentrification can be displacement and isolation. A local project within the City of Port Phillip, '*StreetLife*' is seeking to overcome social isolation and improve social cohesion by supporting street residents to organise street events or parties to give them an opportunity to talk and get to know their neighbours. Street events may include a joint garage sale, researching the history of the area or communal services (pet walking, child minding etc). This project is being co-ordinated by the Port Phillip Community Group (PPCG) an organization co-located with St. Kilda Legal Service at the St. Kilda Community Centre.

So far the project has been successful in facilitating about 30 street parties. A focus group and full evaluation of the project will be completed in July 2004, but all indications are that the project has been extremely successful in fostering good relationships between neighbours. The project focuses on inclusion, ensuring that even the most isolated residents are invited, and encouraged to participate. The project brings together and creates a bond between people from diverse cultural backgrounds, people of different ages, education and income levels based on their shared place of residence.

We propose that a similar project (providing there are sufficient resources allocated towards this) could be undertaken targeting residents of apartment blocks managed by a body corporate. Should such a project be funded, members of the body corporate could work with a PPCG / Legal Service worker to organise the event. A pilot project could be trialed initially within the City of Port Phillip by the St. Kilda Legal Service and Port Phillip Community Group, targeting 3 - 4 properties.

A body corporate community with a high level of social connectedness is less likely to be divided by conflict. If a project such as '*StreetLife*' can be adapted to improve relationships between residents within body corporate communities, this can only assist body corporate members to reach decisions together relating to management of their property and to resolve conflicts internally before escalating into more serious disputes.

***Recommendation:*** A pilot project adapting '*StreetLife*' to body corporate communities within the Port Phillip area should be funded and trialed.

## Management and Governance

---

It is acknowledged in the Future Directions Paper (p25) that an increasing number of owner-investors-landlords are interstate or overseas and do not have any day to day interest in their property, which can affect the running of meetings and decision making by bodies corporate. This also means an increasing number of tenants are living in properties managed by a body corporate, yet there is little mention of tenants in the Future Directions Paper.

### *Tenants living in properties managed by a body corporate*

While a tenant living in a property managed by a body corporate is entitled to expect to enjoy the same rights as an owner (eg. right to quiet enjoyment of the leased property; use of common property), they cannot become a member of a body corporate. This means that tenants have no right to attend body corporate meetings, no right to receive minutes of body corporate meetings or even be privy to discussions at body corporate meetings that may directly concern them. Body corporate rules can be made or changed by members, that impact on tenants (who are sometimes long term residents) as enforced by their landlord, without those tenants having any right to attend body corporate meetings, have any input into the decision making process or even be consulted. Body Corporate rules may be applied and enforced unfairly or inconsistently against tenants. While tenants have access to the Victorian Civil and Administrative Tribunal to resolve disputes regarding matters that are covered by the Residential Tenancies Act there is no such avenue for problems arising in relation to body corporate rules.

The Subdivision (Body Corporate) Regulations 2001 (regulation 507) requires a member who does not occupy his or her lot to give the occupier a copy of the body corporate rules at the commencement of occupation and a copy of any new rules as soon as possible after the new rules are made. In practice, this is often overlooked and tenants are not always given a copy of the body corporate rules, even where a lease contains a special condition to the effect that a tenant is bound by the rules.

The Future Directions Paper (p10) refers to an option of a requirement that the body corporate rules be incorporated in any residential tenancy lease. We support the current provision that landlords are required to provide tenants (as an occupier) a copy of the body corporate rules and any new rules and suggest this could be strengthened with a requirement that the rules be attached to any residential lease at the time of entering the lease. Since a residential lease is a private agreement reached between a landlord and tenant it would be inappropriate to incorporate body corporate rules into residential leases. It may also result in confusion for many tenants and be unenforceable against a tenant where the rules attempt to restrict tenants' rights under the Residential Tenancies Act 1997. Body corporate rules that are too restrictive may also result in the increasing number of owner-investors finding it more difficult to lease their premises, particularly in the medium-high end of the tenancy market in the CBD. Any body corporate rules that attempt to restrict, exclude or modify tenants' rights under the Residential Tenancies Act 1997 should be considered invalid.

The Residential Tenancies Act 1997 [section 68(3)] now requires a landlord to maintain not only the rented premises but also take reasonable steps to ensure that the common areas relating to those rented premises are maintained in good repair. As there is no legal relationship between a tenant and the body corporate, only a landlord or agent can request that the body corporate carry out repairs or maintain common or shared property (such as window frames, a leaking roof, fences, pruning of trees, gardening, stairwells, car spaces and parking, lighting etc.). A tenant, being unable to attend body corporate meetings, is limited to asking their landlord to raise the matter with the body corporate. This can be frustrating for tenants where the landlord is an absent owner-investor that fails to participate in the operation of the body corporate and although may be required to take reasonable steps to request maintenance and repair to common areas on the tenant's behalf, does so reluctantly. Therefore, we support the proposal in the Future Directions Paper (p13) allowing a tenant to request a general meeting with the body corporate to discuss matters.

St. Kilda Legal Service also supports measures to promote participation by non-resident owner-landlords in decision-making and suggests that there be a requirement for absent landlords or their representatives to participate in a specified number of body corporate meetings each year (eg. twice a year). This may assist in resolving long-standing disputes where obstructive and controlling body corporate member/s may dominate the running of a body corporate. These situations may arise within a body corporate where the majority of flats/units are rented and the tenants themselves bear the brunt of overbearing owner-occupiers, with limited alternatives available to deal with and participate in the resolution of ongoing problems. Tenants should therefore also have the right to access any dispute resolution process, particularly where their landlord is unwilling or fails to act on their behalf.

Given that an increasing number of properties are being subdivided and developed for investment purposes, resulting in an increasing number of tenants living in properties managed by a body corporate, and increasingly more long term tenants (due to a lack of access to home ownership and public housing) residing in properties than resident-owners, the capacity of tenants to participate and contribute to the management of their place of residence should be considered in this review. We suggest that consideration be given to allowing tenants the right to receive minutes of body corporate meetings in order to keep abreast of any issues arising and to be informed of discussions and any decisions relating to their place of residence. Likewise, we suggest consideration also be given to allowing tenants attend body corporate meetings (without voting rights) to contribute to debate and discussion on issues concerning their place of residence.

***Recommendation:*** Requirement that landlords give a copy of the body corporate rules to the tenant on occupation of their lot should be strengthened with the additional requirement that the rules be attached to any residential lease at the time of entering the lease.

***Recommendation:*** Absent owner-investor-landlords (or their representative) be required to participate in a specified number of body corporate meetings each year.

***Recommendation:*** Tenants should have the right to access any dispute resolution process introduced, particularly where their landlord is unwilling or fails to act on their behalf.

***Recommendation:*** Tenants should be allowed the right to receive minutes and attend body corporate meetings (without voting rights) as a resident living in a body corporate community.

## **Other proposals for reform**

---

### **Legal status of the body corporate**

The ability of the body corporate to initiate legal proceedings on behalf of members should not be limited to seeking remedies to rectify defective building work.

Recently a client sought legal advice from St.Kilda Legal Service after having taken legal action against a body corporate manager in the Civil Claims List of the Victorian Civil and Administrative Tribunal (VCAT), on behalf of the body corporate in relation to a matter affecting all members. However, in this instance VCAT awarded costs against the complainant, which raised the issue of whom should bear the legal costs and costs awards of civil litigation where an individual member is acting on behalf of other body corporate members.

St.Kilda Legal Service therefore supports amending the legislation to clarify the power for a body corporate to take legal action on behalf of its members, including the appropriate resolution required of the members.

## **Towards a new body corporate regulatory scheme**

---

### **Funding a new regulatory model**

If an annual registration fee is introduced for all bodies corporate, to be equitable it should be according to a sliding scale taking account of the following: size of the property and the number of body corporate members; whether residential or commercial (whether lots are primary residence or for investment purposes); management (whether self-managed or professionally managed).

A range of sources should be considered in funding any new regulatory model. St. Kilda Legal Service supports a combination of options 2 and 3 with a portion of the interest collected on monies held in trust by bodies corporate and an application fee to access an independent dispute resolution process, such as a specialist list within the Victorian Civil and Administrative Tribunal. These applications fees should be in accordance with current VCAT

applications fees for other lists, with the ability to request a waiver where the fee will cause financial hardship.

Another option not mentioned in the Future Directions Paper is for the State Government to contribute a portion of stamp duty raised from the sale of subdivided properties in Victoria towards funding the new regulatory model. This option could overcome the limitation of the other options, taking several years to be fully effective, and should be considered combined with options 2 and 3.

## Summary and recommendations

St. Kilda Legal Service supports the following proposals, to improve the operation of bodies corporate, contained in the Future Direction Paper:

- Steps to further improve legal information and education within the community on the law relating to bodies corporate, such as additional information being required to be disclosed to potential purchasers in the vendor's statement or attached to the body corporate certificate prior to the sale of a property;
- Bodies corporate being encouraged to develop their own internal process for resolving disputes;
- Introduction of an easily accessible and inexpensive tiered dispute resolution model for those people living in properties managed by a residential body corporate;
- Conciliation resulting in legally binding and enforceable agreements to resolve body corporate disputes;
- A specialist list be created within the Victorian Civil and Administrative Tribunal to hear body corporate disputes, particularly complex disputes and those disputes unable to be resolved at an earlier stage;
- Measures to promote participation by non-resident owner-landlords in decision-making;
- Allowing a tenant to request a general meeting with the body corporate to discuss matters;
- Amending the legislation to clarify the power of a body corporate to take legal action on behalf of its members;
- A combination of options 2 and 3 to fund a new regulator model, providing there is the ability to request a waiver from application fees that will cause financial hardship;
- Further community consultation with stakeholders is required in developing any of the proposed options within the Future Directions Paper.

St. Kilda Legal Service further recommends the following:

- In addition to information provision, Victorian residents with a body corporate dispute also need to have access to funded specialist legal advice, advocacy and casework support services to enable them to exercise their legal rights and responsibilities;

- A community development approach needs to be taken to promote social cohesion, reduce isolation and improve relationships between residents within body corporate communities in order to tackle the underlying cause of many body corporate disputes;
- A pilot project adapting '*StreetLife*' to body corporate communities within the City of Port Phillip should be funded and trialed;
- Requirement that landlords give a copy of the body corporate rules to the tenant on occupation of their lot should be strengthened with the additional requirement that the rules be attached to any residential lease at the time of entering the lease;
- Any body corporate rules that attempt to restrict, exclude or modify tenants' rights under the Residential Tenancies Act 1997 should be considered invalid;
- Absent owner-investor-landlords (or their representative) be required to participate in a specified number of body corporate meetings each year;
- Tenants should have the right to access any dispute resolution process introduced, particularly where their landlord is unwilling or fails to act on their behalf;
- Tenants should be allowed the right to receive minutes and attend body corporate meetings (without voting rights) as a resident living in a body corporate community;
- The State Government contribute a portion of stamp duty raised from the sale of sub-divided properties in Victoria towards funding the new regulatory model in addition to options 2 and 3;
- Given that this review is proposing substantial legislative reform, any new regulatory model introduced should be evaluated.