

20 June 2019

Security of Payment Amendment Regulation Consultation
Regulator Policy, Better Regulation Division
Department of Finance, Service and Innovation
Locked Bag 2906
Lisarow NSW 2252

By email: securityofpaymentpolicy@finance.nsw.gov.au

Dear Sir/Madam

Proposed amendments to the Building & Construction Industry Security of Payment Regulation 2008

We refer to the invitation to make submissions on the proposed NSW *Building and Construction Industry Security of Payment Amendment Regulation 2019*.

We note that one of the objects of the Regulation is to exempt owner occupier construction contracts from the operation of the *Building and Construction Industry Security of Payment Amendment Act 1999*.

The Owners Corporation Network of Australia Limited, representing residential owners corporations throughout the state, fully supports that exemption. That exemption is clearly intended to, and should, apply to work done to existing residential strata schemes and residential building work for “mixed use” strata schemes (being strata schemes containing both residential and commercial/retail lots), such as remedial and refurbishment work. However, our concern is that the Regulation is not clearly drafted enough to make clear that the exemption so applies.

The relevant amendment is currently proposed as follows:

3A Application of Act

For the purposes of section 7 (5) of the Act, owner occupier construction contracts are prescribed as a class of construction contracts to which the Act does not apply.

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The term “owner occupier construction contracts” is not defined in the Regulation, or the Act.

Failing to make clear such contracts include contracts with existing residential building strata schemes, or residential building work for mixed use schemes, will lead to disputes when builders inevitably try to make payment claims under the Act for such work. Fully commercial and retail strata schemes would still be covered by the Act, and a complete exemption for all owners corporations (which can be non-residential) might otherwise benefit them when not intended. It would also appear serviced apartment blocks and similar are not intended to be exempted.

The clause should be drafted to make this exemption clause, we would suggest by additional provisions to the proposed Clause 3 as follows or to similar effect:

3A Application of Act

- (1) For the purposes of section 7(5) of the Act, owner occupier construction contracts are prescribed as a class of construction contracts to which the Act does not apply.*
- (2) For the purposes of this Clause, “owner occupier construction contracts” include contracts to do construction work that are:
 - (a) residential building work (within the meaning of the Home Building Act 1989) on behalf of an owners corporation that is an existing strata scheme; or*
 - (b) entered into with, or on behalf of, an owners corporation that is an existing strata scheme, and comprises a building or buildings or structure(s) that are entirely Class 1a or 2 building(s) or structure(s) under the Building Code of Australia or National Construction Code.**
- (3) For the purposes of this Clause, “owner occupier construction contracts” do not include contracts to do construction work that are entered into with, or on behalf of, an owners corporation that is an existing strata scheme:
 - (a) for a building or buildings or structure(s) that is not a Class 1a or 2 building and structure under the Building Code of Australia or National Construction Code;*
 - (b) for a building or buildings or structure(s) that is a Class 1a or 2 building and structure under the Building Code of Australia or National Construction Code, but where all the dwellings in that scheme are serviced apartments or used for short term or holiday letting.**
- (4) For the purposes of this Clause, “owners corporation” and “strata scheme” have the same meaning as they have in the Strata Schemes Management Act 2015.*

Yours sincerely



Karen Stiles
Executive Officer