

15 November 2017

Hon. Matt Kean MP  
Minister for Innovation and Better Regulation  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**BY EMAIL: [office@kean.minister.nsw.gov.au](mailto:office@kean.minister.nsw.gov.au)**

(Original will not be posted)

Dear Minister

**Re: Strata Schemes Management Act 2015 (SSMA 2015)  
Lack of Penalty — Breach of NCAT Order**

For your information I attach a copy of the full appeal panel decision in *The Owners – Strata Plan No 82306 v Anderson*<sup>1</sup>.

Recent media reporting may have brought to your attention the fact that the *NSW Civil & Administrative Tribunal (NCAT)* is powerless to impose a penalty for non-compliance with orders made by NCAT with respect to a breach of the SSMA 2015.

This outcome is clearly:

- (a) an unintended consequence of the amending legislation; and,
- (b) in conflict with the public interest.

**Background**

Section 202 of the *Strata Schemes Management Act 1996 (SSMA 1996)* provided for NCAT having authority to impose civil penalties for contravention of orders made by NCAT under the SSMA 1996.

Unfortunately, the equivalent of s.202 in the SSMA 1996 does not occur in the SSMA 2015.

In doing away with the Adjudication process; thinking at that time may well have been that the equivalent of s.202 in the SSMA 1996 was already to be found within the provisions of the *Civil & Administrative Tribunal Act 2013 (CATA)*.

Unfortunately, the enclosed decision affirms that section 72 of the CATA does not identify an order under the SSMA 2015 as a **designated order** to which a penalty will apply for non-compliance with an NCAT order.

---

<sup>1</sup> [2017] NSWCATCD 85

Thanks to our sponsors

## **The Fix**

I have been requested to write to you seeking your urgent attention to the matter with a view to the Government effecting an amendment to s72 of the CATA to include the SSMA 2015 as one of the designated pieces of legislation in section 72.

## **Conclusion**

The OCN constituency is greatly alarmed by the present circumstances. Doubtless, so too is NCAT.

Your urgent reply would be appreciated in the public interest.

Yours faithfully,

Stephen Goddard  
Spokesperson

Encl.