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Real Estate and Housing
NSW Fair Trading | Department of Customer Service
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STRATA MANAGING AGENTS LEGISLATION AMENDMENT BILL 2024

The Owners Corporation Network of Australia Limited (OCN) is the peak consumer body representing and advocating the rights and interests of residential strata and community title owners and occupiers. As such, OCN is uniquely positioned to understand the impact the legislative framework has on day-to-day machinations and community living. OCN is a full member of the Consumers' Federation of Australia.

Strata is the fastest growing form of residential property ownership in Australia. Over half the new dwellings to be built in our metropolitan areas over the next decades will be strata titled. The growth of this sector raises increasingly important questions over property ownership and governance. The payment of commissions is but one predatory practice in strata.

The Bill purports to reform the practice of strata managing agents regarding insurance commissions and related party transactions in three ways -

1. prohibiting commissions for work not done by agents (Sch 6 of the Bill),
2. providing for further disclosure about commissions, training services, and related party transactions (Sch's 1 – 5), and
3. providing for enforceable undertakings as a regulatory enforcement alternative to prosecution for breaches of the law (Sch 5).

OCN supports the Bill insofar as it provides for enforceable undertakings as a regulatory enforcement alternative to prosecution for breaches of the law (Sch 5).

OCN notes the recent success by the NSW Building Commissioner using such powers and welcomes this power being made available to the NSW Strata and Property Commissioner.

OCN does not otherwise support the Bill.

The Bill fails to prohibit strata managing agents, as fiduciaries of the schemes they manage, putting themselves in unmanageable conflict with the interests of their clients by taking insurance commissions and engaging in related party transactions.

Strata managing agents have been unable to comply with existing provisions for disclosure of commissions and related party transactions that are relatively simple. The additional provisions in the bill are complex and will either be misunderstood or misapplied.

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For example –

- 1 The proposed amendment to s 57 provides for breaches about commissions and training services but does not apply to related party transactions such as joint venture arrangements with brokers and other related party transactions now being investigated by the Department of Fair Trading.
- 2 By the proposed addition of s 57 (3B) (d), in making disclosure about a commission or training service the managing agent must give, 'a statement that the managing agent believes that accepting the gift or other benefit does not contravene the Property Stocks and Agents Act Regulation 2022, Sch 1, s 11'.

Section 11 provides the agent must not accept an appointment, or continue with one, if doing so places the agent in a conflict situation with its client.

There is no utility in this reform as an agent complies with this section even if the agent's belief is unreasonable, misconceived, or without foundation.

- 3 The proposed new s 6 of Sch 12 of the Property Stocks and Agents Regulation 2022 is as follows -

The agency agreement must not contain a provision that permits the agent to require the person for whom the agent is acting, or another person, to pay a commission to the agent in relation to the purchase of an insurance policy where the agent has not performed any work in relation to the purchase.

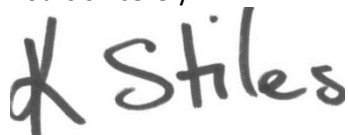
There is no definition of work, nor is it possible to conceive of an effective definition of the term in this context. A managing agent with the joint venture or other relationship with a broker or other related party satisfies this clause by simply making a diary note that insurance is to be renewed or requesting a broker to arrange insurance.

This provision does not fulfill Minister Chanthivong's 26 June 2024 media statement that the government will be 'banning agents from receiving a commission on insurance products when they don't play a role in finding the best deal for residents'.

OCN remains of the view that the only way to protect strata owners is to prohibit strata managing agents taking insurance – and any other - commissions and entering related party transactions.

As the sole consumer voice, OCN is happy to engage on any aspect of this submission. Our ultimate goal is Plain English strata law that is fit for purpose ie lay people owning and living in multi-home dwellings. Currently the complexity of strata law, and the resultant burden on owners, is increasing not decreasing.

Yours sincerely



Karen Stiles
Executive Director