

Ms Natasha Mann
NSW Fair Trading Commissioner
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SYDNEY NSW 2000

Dear Natasha,

By email: natasha.mann@customerservice.nsw.gov.au

20 December 2024

Principles for Reforming the Strata Industry

Following the successful Fair Trading round table related to insurance commissions on Wednesday 27 November 2024, OCN has taken the opportunity to summarise our views on what success looks like, from a consumer's perspective, for your consideration.

1. A Fair and Transparent Strata Industry

Everyone benefits from a strata industry that is fair, ethical, and profitable.

- Dishonest strata managing agents win business with apparently low fees, boosting their income with hidden payments and complex 'extras'.
- Ethical and transparent practices will allow good strata managers to compete fairly.
- The industry can remain profitable without relying on excessive undisclosed income streams.

Transparency rewards good operators and prevents bad practices from undermining trust.

2. Strata Owners Are the Customers

Strata owners are the paying customers, and most rely on strata managing agents to help them meet their legislated responsibilities. This partnership requires trust and transparency.

As fiduciaries, strata managing agents must put the interests of the owners corporations over their own. In a well-run, ethical strata management business the interests of the strata plan and the strata managing agent should be closely aligned.

If agent fails to uphold this fundamental responsibility, strata owners should have the right to terminate the management agreement at no cost.

This will ensure strata owners can delegate with confidence while holding strata managing agents accountable.

Owners Corporations must specifically approve insurance quotes and payments, rather than make this a delegated strata managing agent responsibility. We note that strata committees must make appropriate efforts to be available to do so promptly and efficiently.

3. No Hidden Payments or Commissions

Implement a 'customer first' model. All payments to strata managing agents must come directly from the owners, with no hidden commissions, kickbacks, excessive markups or third-party incentives. This ensures fairness and removes conflicts of interest.

4. Fair and reasonable payment for fair work

When a broker, authorised representative or strata managing agent is placing insurance or acting on a claim, a fair and reasonable payment for services is appropriate. It may be an annual charge or fee for service separate from the insurance premium.

There is confusion between commissions and broker fees, which often results in double or excessive charging of total intermediary remuneration.

Commissions tend to be used as a "profit centre" and are fraught with conflict and generally not appropriate, noting some good actors rebate commissions.

Commissions also tend to become a 'catch-all' for various services without rigorous scrutiny. A proper analysis of services offered, used and paid for will lead strata managing agents to understand their businesses better and more correctly align cost to service.

Note:

- Increasing intermediary remuneration has fuelled the average 13% year on year premium increases in strata insurance over the last 5 years.¹
- The Trowbridge report contains a useful set of tables² describing what is fair work from the perspective of a strata managing agent and a broker.

5. Clear and Simple Billing

Owners deserve certainty about costs. All fees and charges must be clearly disclosed up front.

Predictable strata management services should be charged as a flat fee. Limit "Schedule B" fees to reasonable and acceptable variable services. No more confusing or surprise costs. Schedule B charges should be forecast to the strata scheme treasurer before they are incurred.

¹ OCN Submission – Select Committee on the Impact of Climate risk on insurance Premiums Page 8

² <https://johntrawbridge.com.au/media/bygakw2y/strata-insurance-phase-1-paper-findings-and-recommendations-july-2022-1.pdf> page 52-54

Any additional fees must be detailed in a monthly invoice submitted to the strata committee or treasurer (as directed by the owners) for approval before payment.

Under no circumstances should strata managing agents 'pay their own bill' from their principals' trust funds without explicit approval.

6. Reform That Rewards Good Operators

These changes level the playing field for ethical strata managing agents who charge fair fees and deliver value. Owners will have more trust in their agents, and the industry can focus on delivering quality service rather than hidden income streams.

7. Vertical Integration

Eliminate the insurance 'joint venture rebate schemes' involving insurers and strata managing agents.

Liaise with the Australian Competition and Consumer Commission (ACCC) before the end of June 2025 regarding the so-called 'vertical integration' in strata insurance underwriting, broking and premium funding (and potentially other service providers to owners corporations) and the damaging impact that this has had on competition in supply of services to owners corporations. Questions to pursue include whether such vertical integration has created an incentive to engage in the conduct referred to in this paper (which the OCN understands would come under the remit of the ACCC Enforcement Group).

Separately, OCN is aware of situations where strata management companies are considering entering joint ventures with insurance brokerages. This may result in an arrangement where there is no formal 'commission' to declare as the arrangement is 'internal'. The risk is there may be up front cash payments and ongoing dividends that might result from these arrangements where the owner's corporation may be none the wiser about the arrangement and it would obscure the commission disguised as a legitimate payment. This would not seem to be in the spirit of the intended changes.

8. Strata Managing Agent

Change the common, but inaccurate, name 'strata manager' to 'strata managing agent'. This will align to the NSW legislation (the *Strata Schemes Management Act 2015* and the *Property and Stock Agents Act 2002*) and focus all parties on the actual role of the strata managing agent, as the agent of the owners corporation to which they owe a fiduciary duty.

Institute a tiered system for licensing of strata managing agents – the skills required to manage a block of 8 lots are very different to those required for managing a block of 80.

Ensure that any strata managing agent undertaking an 'authorised representative' role is not tied to the one service provider.

NOTE: There has been a recent (6/12/24) ABS classification of 'strata manager' at a Federal level. It is unclear at this stage how this will operate in conjunction with state legislation. See link : [ABS occupation standard classification- Strata Manager](#)

9. Strata Committee

Encourage all members of strata committees to undergo training. Develop a set of 'committee member training modules' with each member to complete a certain number within six months of appointment, and for office bearers to undergo compulsory modules.

OCN suggests:

- Minimum level – Information sheet prescribed form (1 -2 pages maximum) on purchase for all owners provided upon completion of sale (via conveyancer / solicitor) – include link to [Living in Strata](#)
- Mandatory training – Introduction - all committee members (What is strata? Strata Hub).
- Mandatory training - Intermediate level - all office bearers -Chair, Treasurer & Secretary – (defect periods, budgets, levies, contracts, insurance, DBP).
- (Optional) Advanced level (embedded networks, self-managed strata).

OCN would be delighted to partner with government in this exercise (subject to funding of OCN resources).

10. Strata Management Contracts

We question whether the existing SCA contract would survive analysis under NSW consumer law. We have previously advocated for government to provide a model contract between the strata agency and the owners corporation. Agents would not be tied to this contract, but it would provide a fair and reasonable foundation from which the parties could negotiate as appropriate.

Failing that, OCN is happy to facilitate discussions with SCA and others to achieve a fairer outcome.

Implementation and Enforcement of Changes

1. Full Disclosure of Hidden Costs:

Strata management companies must table all hidden costs, commissions, and benefits they receive with each of their clients (owners corporations). This includes detailed disclosure of any financial arrangements with service providers.

2. Balanced Adjustment of Costs:

For each disclosed benefit—such as a commission or rebate from a service provider—the agent and owners corporation strike a fair and reasonable charge. This ensures strata owners see no net increase in costs, while service providers and strata managing agents remain financially whole.

Excessive costs will become evident and must be removed.

OCN is happy to work with SCA to work through several case studies and guidelines but believe this adjustment process should be scheduled to be finalised by June 2025.

3. Phased Implementation:

There are largely two parts to this implementation: adjustment of costs (as above) and formalising the full implementation. The full implementation should be phased in over a reasonable timeframe (the next renewal cycle or AGM), commencing from when the adjustment of costs is scheduled to finish, i.e. from June 2025 and finalised by June 2026.

This allows 18 months for service providers and strata managing agents to revise their agreements and comply with the new, transparent structure.

4. Communication

There needs to be a communications program provided to the strata industry to signal the impending changes, obligations and timeframes as well as the likely enforcement obligations and penalties to encourage compliance.

5. Accountability:

Strata management companies must clearly explain to their clients how these changes are being implemented and provide evidence of adjusted charges. This demonstrates good faith and builds trust with owners corporations.

6. Ongoing Monitoring and Reporting:

Monthly reporting on all charges and financial arrangements should be a standard requirement in strata management agreements, ensuring transparency and accountability moving forward.

7. Long-Term Impact:

A transparent, ethical strata industry will foster trust, reduce conflict, and ensure all stakeholders are focused on delivering value to owners and managing these valuable assets.

Regards

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