



**Submission by the
Financial Rights Legal Centre**

NSW Fair Trading

Draft Strata Schemes Management Regulation
2016

May 2016

About the Financial Rights Legal Centre

The Financial Rights Legal Centre (*formerly known as the Consumer Credit Legal Centre (NSW)*) is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2014/2015 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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Introduction

Thank you for the opportunity to comment on the draft Strata Scheme Management Regulation 2016. The Financial Rights Legal Centre (“Financial Rights”) wishes to address the draft regulations as they apply to payment plans at Part 3, Reg. 19.

Payment Plans

While Financial Rights is pleased that the Strata Scheme Management Act 2015 has included a provision under s. 85(5)-(7) to enable the establishment of payment plans for payments of overdue contributions, we remain concerned that the right to establish a payment plan is not mandatory and is vague and unclear. Financial Rights puts forward the following recommendations to produce some clarity for lot owners suffering from financial hardship.

Allowing the payment plan to work

Financial Rights notes that Part 3, reg. 19 details what a payment plan for unpaid contribution is to include. It states at Reg. 19(1)(i) that:

A payment plan for the payment of overdue contributions is to be in writing and is to contain the following:

...

(i) a statement that the existence of the payment plan does not limit any right of the owners corporation to take action to recover the amount of the unpaid contributions.

Financial Rights recommends the following should be added at the end of this sentence:

*(i) a statement that the existence of the payment plan does not limit any right of the owners corporation to take action to recover the amount of the unpaid contributions **if the lot owner does not adhere to the agreed payment plan.***

Financial Rights strongly believes that if a payment plan is in place that this has to be given a chance to be effective. If an owners corporation were to take action during the 12 month period of a payment plan this would be a serious breach of good faith by an owners corporation who has freely entered into what is a non-mandatory payment plan with a lot owner. If a lot owner fails to adhere to the payment plan then the owners corporation has every right to speak to the lot owner and if necessary take action to recover the amount of unpaid contributions but until that point we believe that the owners corporation should adhere to their side of the payment plan bargain.

Obligation on owners corporation to inform lot owners of any interest written off

Financial Rights also notes at Reg. 19(1)(d) states that:

A payment plan for the payment of overdue contributions is to be in writing and is to contain the following:

(d) the amount of any interest payable for the overdue contributions and the way in which it is calculated,

Financial Rights believes that owners corporations should write off accrued interest if an owner was unable to pay outstanding levies due to reasons beyond the owner's control, or where the payment of accrued interest would cause the owner hardship or the owner is in receipt of a pension, benefit or other allowance under the *Social Security Act 1991(Cth)*. As this suggestion has not been included in the Act, Financial Rights proposes that at the very least owners corporations should be made aware that that this option is available to consider. This can be done by including the following in writing to the lot owner:

(d) the amount (if any) of interest payable for the overdue contributions that has been written off for reasons of financial hardship or other circumstances.

Obligation on owners corporation to inform lot owners of decision

As has been noted in previous submissions on the new Strata laws, Financial Rights believes that all owners should hold the right to enter into a payment plan under certain circumstances including financial hardship as a consequence of unemployment, illness, a special levy or other reasonable cause. While we disagree with the direction taken in the Act under s. 85 (5)-(7) which makes entering into a payment plan voluntary, Financial Rights accepts that this is the case moving forward. Financially vulnerable lot owners however will lack any power or say over whether their situation is even considered by the owners corporation.

In order to provide some balance to this situation Financial Rights recommends that owners corporations be obliged to respond to a payment plan request, provide reasons why a payment plan has not been agreed to and provide basic information to lot owners about what they can do to remedy their situation. We believe that this is the very least an owners corporation can do to for a lot owner faced with financial difficulty.

Financial Rights therefore believes it is only fair to include the following sub-regulation to Reg. 19:

(3) If an owners corporation chooses not to agree to a payment plan, they must inform the lot owner in writing the following:

(a) their decision not to agree to a suitable payment plan,

(b) the reasons for not agreeing to the payment plan,

(c) details of accessing any internal dispute resolution scheme established by the owners corporation under s. 216 of the Strata Schemes Management Act 2015,

(d) details for applying for mediation under the Division 2 - Alternative dispute resolution provisions of the Strata Schemes Management Act 2015,

(e) a statement that the lot owner has the right to take the matter to the NSW Civil and Administrative Tribunal and/or the NSW Department of Fair Trading.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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