Property Owner's Association of NSW Inc.
Ph: (02) 9363 3949
PO Box 329, Bondi Junction NSW 1355
Email: info@poansw.com.au
www.poansw.com.au

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SUBMISSION on COMMON PROPERTY REPAIRS AND MAINTENANCE COMPLIANCE AND ENFORCEMENT POLICY

Having reviewed the draft policy issued by Fair Trading the following comments are made:-

- 1.1 Policy Purpose – this needs to be clarified with a clear statement of what is intended. Current statements are vague with a lot of latitude.
- 2.1 Educate, Engage, Enforce – No disclosure of how education to all owners will be done. This is one of the most important aspects since in many strata plans some owners are resistant to spend money on repairs and maintenance due to the impact on strata levies.
- How will engagement with lot owners who object to increased levies be done to assist in convincing owners to fund required repairs and maintenance? Can strata committees/strata managers request assistance in doing so?
- There is no mention of how financial assistance to owners who cannot afford increase levies will be handled. Will Fair Trading assist in making financial arrangements?
- No mention of incompetent building managers who do not advise strata committees/managers of non-compliances or required repairs or understand the requirements. Building & Strata Managers have a very important role in guiding and advising strata committees who may be unaware of repair and maintenance issues. Building managers should be held responsible to ensure the discharge of their duties. Some building management contracts can run for 10 years and be difficult to terminate for non-performance.
- Old buildings may have substantial issues to rectify – will they be given adequate timeframe to do so?
- Will tenants have to report issues to Building manager, strata manager or strata committee first?
- "Rectification plan - If a breach is identified, Fair Trading may request the owner's corporation to provide a rectification plan outlining proposed actions and timeframes for completion. This should be developed with input from relevant experts to ensure compliance with relevant planning,

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building and strata laws." Is this all at Owners Corporation expense ? Will Fair Trading assist in negotiating fair rates of relevant experts?

- "Fair Trading will review the rectification plan and may request clarifications". Time frame only or technical details of proposed repairs ?
- "provide guidance and information to support voluntary resolution or better understanding of legal obligations," This should be part of the education program.
- Certification by strata managers that Fair Trading has given an education program to all owner in a strata plan should be a requirement.
- "Fair Trading may also require an owners corporation to nominate a director or other officer to answer questions on its behalf. Answers given by the nominated individual bind the owners corporation." No such person exists in the Strata Management Act.
- Trade resources are scarce now. Following this legislation they will be harder to engage and timeframes will blow out.
- "Fair Trading may examine or inspect an item, take and remove samples, carry out inquiries, measurements or tests, and make photographs or other recordings where necessary." At who's cost ??
- "In situation where part or all of the premises are uninhabitable or pose a safety risk, Fair Trading encourages early discussions around alternative accommodation arrangements during the mediation and complaint process." At who's cost ?? What standard of accommodation ? What if none available ?
- "Fair Trading may also publish a compliance notice to ensure prospective purchasers are aware of issues in the building." This will lower resale value of units which owners won't be happy with.
- "Recipients of a penalty infringement notice may elect to have the matter heard and determined by a court. It is also open to the recipient to make representations to Revenue NSW seeking withdrawal of the notice. This may be considered in cases where a recipient believes there is insufficient evidence of a breach, the penalty is harsh, or there are other mitigating factors." Prior appeal should be available without having to go to court.
- Whilst there is an obligation on the Owners Corporation to maintain & repair, the Owners Corporation has no right to enter an owner's premises without the owners permission, and then the right to repair.

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- This can significantly extend the timeframe that the Strata Committee can address the issue, and invites litigation and penalties rather than resolving whatever is the issue.
- Whilst the threat of penalties can encourage owner compliance, it does not compensate other willing owners who may be adversely affected.
- There have been issues where a unit, being damaged by a water leak from the unit above, the leak source lot owner refusing access , and refusing to repair. Meanwhile the affected unit below suffered water ingress for an extended period.
- What approach is going to be taken with owners who have mental health issues ? This has caused a lot of problems in various strata buildings and is very difficult to address.
- "Certain regulatory powers are held in reserve by Fair Trading and are exercised only in exceptional circumstances where serious investigative action is required to address significant health, safety or compliance risks." What are reserve powers ?
- "where part or all of the premises are uninhabitable or pose a safety risk, Fair Trading encourages early discussions around alternative accommodation" What level/type of fire risk would prompt this ?
- "Fair Trading may issue a penalty infringement notice where it believes a contravention has occurred that requires a more formal sanction than an administrative resolution," Is there an appeal process for this penalty infringement notice ?
- "Prosecution Guidelines." Where are these guidelines published ?
- "If an owners corporation is not satisfied with a decision made by an authorised officer, it can request an internal review of that decision. Details about review options will be provided with the original decision notice. The Reviewable Decisions Unit within Fair Trading conducts these internal reviews." There should be external independent body that does these reviews.

Simon Ruben
Treasurer – Property Owner's Association of NSW