

Wednesday, 29 September 2021

By email: regulationpolicy@justice.vic.gov.au

Regulation Policy
Consumer Affairs, Liquor, Gaming and Dispute Services
Department of Justice and Community Safety

Dear Madam/Sir

Consultation on Owners Corporations Amendment Regulations 2021

Thank you for the opportunity to provide comment on the draft Owners Corporation Amendment Regulations 2021 (the **Regulations**).

Consumer Action's comment is limited to proposed new model rule 3.2 relating to payment of fees by instalments. The proposed new model rule states:

- "(1) A lot owner may request to enter into a payment plan with the owners corporation which allows the lot owner to pay any outstanding fees by instalments if the lot owner is experiencing financial hardship.*
- (2) The owners corporation must agree to enter into a payment plan with the lot owner if the lot owner can demonstrate financial hardship.*
- (3) The owners corporation may review a payment plan at any time."*

As noted in our 2019 submission to Consumer Affairs Victoria on the consultation draft of the Owners Corporation and Other Acts Amendment Bill,¹ we are disappointed with the approach taken by this legislation to the issue of financial difficulty. The legislation enables an owners corporation to make rules with respect to the payment of fees by instalments by lot owners in financial difficulty. While owners corporation of course should be empowered to make such rules, this approach falls a long way short of what the community expects: that owners corporation be required to offer payment assistance, including through payment of fees by instalments, to lot owners experiencing payment difficulty. We are concerned about the prospect of some owners corporations not making such rules and ask that Consumer Affairs Victoria monitor this.

¹ See: <https://www.consumer.vic.gov.au/resources-and-tools/legislation/public-consultations-and-reviews/owners-corporations-and-other-acts-amendment-bill-exposure-draft-consultation>.

Moreover, we are concerned that the proposed model rule, which requires a lot owner to 'demonstrate' financial hardship, is out-of-step with a modern regulatory approach to supporting people experiencing payment difficulty.

By way of example, we refer to the Essential Services Commission 2016 Energy Hardship Inquiry.² That inquiry concluded that regulations that require an assessment of a cause of financial difficulty (i.e. any requirement to 'demonstrate' or prove or provide evidence of hardship) is highly problematic. The Commission stated:

The cause(s) of a customer's payment difficulty may be hard to identify, and if identified, may or may not meet their retailer's definition of 'hardship'. Focusing on whether a customer meets the retailer's definition of 'hardship' and the causes of payment difficulty, rather than responding to the type of payment difficulty causes the retailer to gather information from the customer that is often highly personal in nature. The subjective judgements inherent in these assessments mean that many customers miss out on the assistance they need.

Throughout the inquiry many stakeholders highlighted that customers do not consider themselves as being in 'hardship', much less refer to themselves in these terms. Stakeholders also observed that such labels can stigmatise customers, discouraging customers in need from engaging with their retailer.³

The Commission found that payment difficulty can be identified objectively through information that a retailer already holds, particularly: the amount required to be paid at a point in time; the customer's actual payments; and the total amount owed. The Commission concluded that given this information is already held by the retailers, it should not be up to a customer to 'demonstrate' financial hardship.

We consider that a similar expectation should be set for owners corporations, that is, they should accept that a lot owner is in payment difficulty based on objective information and should not require detailed personal information or onerous processes as part of 'demonstrating' financial hardship. While lot owners may well share information about their income, spending patterns or information about their personal circumstances, it should be their choice to do so, and it should not be a requirement of the rules of the owners corporation. Rather, owners corporations should agree to enter into a payment plan where a lot owner is experiencing payment difficulties, as evidenced by a request for assistance and the account information held by the owners corporation.

Commonly, the decision to allow a payment plan is via a resolution of the owners corporation or its committee, which is not a simple process. This is because meetings are often difficult to arrange, with required quorums sometimes not achieved. Delays can exacerbate the financial hardship of the lot owner. It would be more effective if the rule relating to payment difficulty was clear and objective, and thus permitted an owners corporation manager to agree to the payment plan on behalf of the owners corporation.

Given the above, we suggest the following changes to the model rule:

² See <https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/energy-hardship-inquiry-2016#tabs-container2>.

³ As above, page 14.

"(1) A lot owner may request to enter into a payment plan with the owners corporation which allows the lot owner to pay any outstanding fees by instalments if *where* the lot owner is experiencing *financial hardship payment difficulty*.

(2) The owners corporation must agree to enter into a payment plan with the lot owner if *where* the lot owner ~~can demonstrate financial hardship~~ *is experiencing payment difficulty*.

This approach should allow an owners corporation manager to clearly identify that a lot owner is in payment difficulty and agree to a payment plan accordingly.

Finally, we suggest that lot owners should be able to seek a review of a decision of an owners corporation regarding a request for a payment plan through an independent body. Pursuant to section 161 of the *Owners Corporation Act 2006* (Vic), the Director of Consumer Affairs Victoria can conduct a conciliation or mediation of a dispute between a lot owner and an owners corporation. In practice, we understand that Consumers Affairs Victoria may refer such disputes to the Dispute Settlement Centre of Victoria. We consider that it is important that the owners corporation be required to comply with independent complaint processes, and that such processes empower a decision-maker to order an appropriate payment arrangement where it is fair and reasonable to do so. This would bring owners corporation fees in line with the approach with other common consumer debts, such as credit, insurance, energy and telecommunications, which all benefit from clear and independent complaints processes relating to payment difficulty.⁴

Please contact us on 03 9670 5088 or at info@consumeraction.org.au if you would like to discuss this submission further.

Yours faithfully,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

⁴ Financial difficulty complaints relating to credit & insurance can be made to the Australian Financial Complaints Authority; complaints around payment difficulty and energy can be made to the Energy & Water Ombudsman Victoria; and complaints relating to telecommunications can be made to the Telecommunications Industry Ombudsman.