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Manager
Consumer Credit Unit
Corporations & Financial Services Division
The Treasury
Langton Credit
PARKS ACT 2600

Dear Sir or Madam

PROPOSED CONSUMER CREDIT LEGISLATION: NATIONAL CONSUMER CREDIT PROTECTION BILL, 2009 (NCCBP) AND RELATED DRAFT LEGISLATION

We refer to your request for submissions regarding the effect of proposed changes to the legislation regarding consumer credit that are contained in exposure drafts released on 27 April 2009. We are pleased to present this submission on the effect of the proposed legislation with respect to strata corporations as defined in section 186A of the proposed National Credit Code.

In my personal capacity, as a lawyer I have specialised in owner corporation issues for more than 20 years. I am currently the President of the Australian College of Community Association Lawyers, having been the founding Vice-President.

In a managerial capacity, my firm, Andreones Lawyers, is the largest specialist strata law firm in the country with some 16 professionals. As a firm, we conduct more commercial litigation cases on behalf of owner corporations than any other.

In my experience of dealing with strata corporations, I see no compelling reason why any strata corporation should be deemed to be a consumer for the purposes of credit legislation.

There are many issues that distinguish a “primarily residential” strata corporation from a natural person. These include:

1. The existence of state-specific legislation and the impact that this has on corporate governance, reporting, record keeping and decision-making of strata schemes.
2. Separate legislation governing strata managers, the primary agents of and advisers to strata schemes.
3. The essentially collective rather than individual nature of strata schemes.

The degree of corporate governance provided by the relevant state acts and the legislative constraints on their decision making are in my view sufficient to ensure that decisions they make are appropriately informed.

The decisions made by “primarily residential” strata corporations have much more in common with decisions by other “non-primarily residential” strata corporations.

Many strata schemes also engage a “Strata Managing Agent” – these managers are subject to a strict operational environment under specific management legislation which I believe is sufficient to ensure that they act with the best interests of their clients in mind. If strata managers were to require any form of credit licencing, they would most likely consider the issue too difficult and so turn away from matters involving funding for strata schemes, thus reducing the options for schemes and their owners.

In addition, in all my personal legal experience as a specialist strata lawyer, in all the activities of my firm and the professionals engaged on strata matters and in all my discussions with colleagues, including members of the Australian College of Community Association Lawyers, I have never seen, nor have I heard of, an instance where a strata corporation has suffered and where treatment by legislation as a consumer would address the wrong.

I am available to provide further information if requested.

Regards



Francesco Andreone

Andreones Lawyers