



Fair  
Trading

Strata Collective Sales Advocacy  
Program

PROGRAM GUIDELINES

2019 – 2022

INTERIM

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## Program Guidelines

# Table of Contents

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1.	THE PROGRAM	3
2.	ELIGIBILITY CRITERIA	4
3.	GRANT APPLICATION	6
4.	THE SERVICE OPERATIONS	7
5.	ADVOCACY ROLE	8
6.	APPROVAL PROCESSES	14
7.	FUNDING	15
8.	ACCOUNTABILITY	16
9.	SUBMITTING YOUR APPLICATION	17



# 1. STRATA COLLECTIVE SALES ADVOCACY SERVICE

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NSW Fair Trading and Land and Property Information (operating within the Department of Finance, Services and Innovation) (DFSI) oversee the Strata Collective Sales Advocacy Service (the Service). The Service is funded to provide legal advice, advocacy services, and assist or represent targeted NSW strata residential consumers before the NSW Civil and Administrative Tribunal (the Tribunal) and the Land and Environment Court (the Court) regarding the strata schemes collective sales and renewals scheme in the *Strata Schemes Development Act 2015*.

A range of information and advice services will be available for strata lot owners who may be affected by the Scheme, including those to be assisted by the Service. This will include a dedicated telephone hotline, the availability of fact sheets, the provision of information to target group agencies and information on Fair Trading's website. Affected lot owners who are not members of the targeted groups will be able to be directly referred to the Law Society of NSW website to be directed either to their nearest legal practitioner or to seek the advice and assistance of a specialist legal practitioner if they wish, at their own expense.

The NSW Government is committed to ensuring that dispute resolution is more equitable to NSW strata residential consumers. The Service will only provide services to certain targeted lot owners from identified disadvantaged groups.

The Service assists targeted lot owners in resolving strata collective sale and renewal scheme disputes in a cost-effective manner. The Service targets those consumers who have an ongoing dispute with their owners' corporation regarding the scheme, such as dissenting from a renewal plan.

Funding of the Service contributes to the achievement of Fair Trading's strategic intent, that NSW will be recognised for value and fairness in the marketplace. It also assists the Government to achieve its consumer protection and social justice policy objectives and assists in ensuring that the community has access to information and consumer help.



## 2. ELIGIBILITY CRITERIA

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### 2.1 *Who can apply*

Applications can be made by:

- New South Wales not-for-profit incorporated or registered organisations.

Note: this does not preclude profit making organisations from applying, providing they do not operate the Service on this basis.

Joint applications, where two or more organisations pool resources and expertise, will also be accepted.

Note that Fair Trading is looking to appoint two organisations to the Service, one in the older persons sector and one in the general sector to provide the required services.

Applications cannot be made by:

- organisations intending to use the funds for a project in a State/Territory other than NSW
- Universities, TAFE and other academic institutions, or
- Government agencies.

DFSI, the Tribunal and their employees are also ineligible to apply.

### 2.2 *Selection Criteria*

Applications must be able to demonstrate the following:

1. Applicant's organisation is financially viable, as demonstrated by its last two audits and most recent annual report
2. Provision of a comprehensive work plan which meets the Service Guidelines
3. Demonstrated achievements in service delivery, planning, development and evaluation, including responsiveness to emerging needs
4. Proven record of effective financial, staff and organisational management
5. Demonstrated commitment to providing equitable and accessible services
6. Proven commitment to accountability, including use of mechanisms for ongoing monitoring and evaluation, and timely submission of prescribed reports which comply with relevant funding requirements
7. Experience in providing legal advice and effective advocacy services
8. Commitment and experience in effective dispute resolution mechanisms
9. Understanding, expertise and knowledge of NSW Strata Schemes legislation



10. Proven ability in the development and provision of effective community education
11. Demonstrated understanding of the requirements of working within a court environment
12. Demonstrated experience in promoting and participating in inter-agency liaison and collaboration
13. Proven capacity to develop and present policy positions to government agencies and other relevant forums in relation to Strata Schemes law issues.

### **2.3 The Service Objectives**

The objectives of the Service are to provide:

- advice to targeted NSW strata residential lot owners on their rights, responsibilities and on what action can be taken to resolve their concerns about the strata collective sales and renewals scheme where it affects the targeted lot owner;
- whilst priority should be given to lot owners in regards to collective sale matters, if capacity exists, the service may provide advice and advocacy to clients with generalist strata matters, providing they meet the criteria as per 5.2 (below)
- advocacy to the owners corporation, developer or relevant parties on behalf of the targeted NSW strata residential lot owners affected by the scheme via telephone calls, letters or personal representation
- negotiation of disputes between the targeted strata residential lot owner and the owners corporation and developer or relevant party
- assistance to targeted strata residential lot owners in the preparation of cases for the Tribunal and the Court mentions and hearings
- representation of targeted strata residential lot owners at the Tribunal and mentions and overcalls at the Court where considered appropriate
- referrals to relevant authorities
- community education activities.



## 3. GRANT APPLICATION

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### 3.1 *Advertisement*

This is a targeted tender process with Fair Trading inviting applications from those organisations with relevant service delivery experience. The funding period will run from 1 November 2016 to 30 June 2019.

### 3.2 *Applications*

To apply for funding assistance from Fair Trading, applicants must:

- i) fill out an application, and
- ii) provide any supplementary documentation, which may be requested to clarify specific application details.

Incorporated organisations are required to submit their applications through their Management Committee, Board of Directors or delegate authority.

Written applications must be lodged with Fair Trading no later than close of business on the day indicated on the application form and in the advertisement. Applications must email. Please ensure that a scanned copy of the application form is submitted showing the original signatures. Unsigned application forms will not be accepted.



## 4. THE SERVICE OPERATIONS

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The Service assists targeted strata lot owners in resolving disputes and concerns in a cost-effective manner. The Service targets those consumers who have an identified dispute with their owner's corporation or the developer in the collective sales and renewal scheme regardless of any prior involvement by Fair Trading. Whilst collective sale matters take priority, the service may assist clients with broader strata issues if capacity allows and clients meet the criteria set out in 5.2.

While the day to day operation of the Service is the responsibility of the funded organisations, Fair Trading is responsible to monitor the Service operations in both organisations to ensure accountability for the funds and that the organisations comply with agreed performance requirements.



## 5. ADVOCACY ROLE

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### 5.1 *Definition of Advocacy in Terms of the Service*

Advocacy relating to the Service means the provision of support services for targeted strata lot owners which aim to achieve the best possible outcome for the lot owner.

This advocacy service will be unique to the Service, given that Fair Trading's role is to provide impartial advice services to non-targeted strata lot owners who may be affected by the scheme in their strata scheme.

### 5.2 *Persons that the Service is required to provide advice and advocacy services for*

Some consumers in the identified target groups face disadvantage in their capacity to resolve disputes between themselves and the owners corporation. These consumers may not be able to afford to engage legal counsel to act on their behalf or require additional assistance and specialist advice and this can sometimes result in an uneven playing field in dispute resolution. The Service limits representation to consumers whose disadvantage would seriously impact on their ability to represent themselves. This includes consumers with literacy difficulties, Aboriginal consumers, and consumers on an aged or disability pension. This is why the Service has been created.

The Service should develop its own guidelines as to which target lot owners will be eligible for representation. Details of proposed guidelines should be provided with the applicant's application. These will need to be approved by Fair Trading. The Service may request amendments if the representation guidelines are considered inadequate in terms of access and equity in service provision.

Targeted residential strata lot owners affected by the Scheme and able to obtain the services of the Service will be the following:

- recipients under the National Disability Insurance Scheme (NDIS)
- other persons with disabilities (Not NDIS)
- aboriginal and Torres Strait Islanders
- low income/Centrelink recipients
- persons under Public Guardianship
- persons on a full pension (subject to means testing).

**Note that owners of lots in residential strata schemes that are members of the target groups are the only persons eligible to obtain the services. Services are not to be provided to members of commercial strata schemes.**



The Service may also wish to consider the value of a Tribunal or Court hearing and/or the actions taken or proposed to be taken by other lot owners in the strata scheme as regards the scheme.

If the Service reviews and amends its Tribunal and Court representation guidelines, Fair Trading must be provided with details of amended guidelines to ensure that principles of access and equity are maintained.

### **5.3 How the Service will obtain referrals for the provision of assistance**

The Service will obtain referrals of targeted persons from the following:

- Fair Trading through its website and dedicated telephone hotline
- targeted person representative groups
- directly by targeted persons made aware of contact details, and
- through the Service's own promotional advertising.

### **5.4 Advocacy in Terms of Assisting a Consumer to Prepare for a Tribunal Hearing and representing targeted lot owners at the Tribunal**

Targeted strata lot owners affected by the scheme may seek assistance from the Service to prepare their evidence for a hearing in the Tribunal. They may seek this assistance before or after an application has been lodged with the Tribunal.

Applications to the Tribunal will primarily be made regarding resolutions of the owners corporation in relation to the scheme, either to invalidate or nullify a resolution.

Lot owners should be made aware of the legal obligation under section 227 of the *Strata Schemes Management Act 2015* to first attempt mediation of a dispute prior to a matter being heard.

Targeted consumers can be advised by staff as to the merits of their case and the types of evidence which could be taken to the hearing.

Matters should be dealt with on a casework basis, with the legal, strata, and dispute resolution expertise of the Service staff being utilised to advise consumers on the types of evidence to present to the Tribunal, how to present their case and the technical issues on which they should rely.

Under section 45 of the *Civil and Administrative Tribunal Act 2013*, a party must seek leave to be represented in the Tribunal. The Tribunal must give approval before any party, whether consumer or contractor, can be represented in a hearing. The Act sets out the circumstances under which the Tribunal may consider approving representation.



When considering the issue of representation, the Service staff will need to consult the Acts, including the *Strata Schemes Management Act 2015* and *Strata Schemes Development Act 2015*, and the Chairperson's Directions.

Notwithstanding the legislative limitations on representation, given the intensive nature of this support, representation cannot be made available by the Service for all targeted lot owners involved in disputes relating to the Scheme in the Tribunal. The Service staff will need to balance the need for representation of targeted lot owners against any other lot owner's applications to the Tribunal they are aware of, and the potential outcome for their client. The Service staff will therefore need to rationalise available resources to ensure support is provided to the maximum number of targeted lot owners.

### **5.5 Advocacy in Terms of Assisting a Consumer to Prepare for a NSW Land and Environment Court Hearing**

Targeted strata lot owners affected by the scheme may seek assistance from the Service to prepare their evidence for a hearing in the Tribunal. They may seek this assistance before or after an application has been lodged with the Tribunal.

Section 180 of the *Strata Schemes Development Act 2015* provides that a dissenting owner, or a person on whom notice of the application for an order to give effect to a strata renewal plan may file an objection to the application in the Court.

A person on whom notice of the application for an order to give effect to a strata renewal plan is defined in section 179 (2) of the Act. These include:

- each owner of a lot in the scheme
- each registered mortgagee or covenant charge of a dissenting owner's lot, and, if the strata renewal plan is for a collective sale of a strata scheme, the proposed purchaser if known
- the local council and the proposed developer (if known) if the strata renewal plan is for a redevelopment of a strata scheme
- any other person directed by the Court.

For purposes of clarity, the Service does not apply to proposed purchasers, developers or the Council. With respect to other persons, the Service will only apply to persons who meet the requirements of a targeted person as set out in the Guidelines.

The Service can provide advocacy in terms of assisting a targeted person with the filing of their objection before the Court. However, the Service is not to appear for a targeted person in the Court except for mentions, and is not to instruct Counsel. Targeted persons must be advised that these actions are to be their responsibility when first engaged by the targeted person.



As with Tribunal matters, advocacy cannot be made available by the Service for all targeted lot owners involved in disputes relating to the scheme in the Court. The Service staff will need to balance the need for representation of targeted lot owners against any other lot owner's applications to the Court they are aware of, including other decisions made by the Court in relation to the operation of the scheme, and the potential outcome for their client. The Service staff will therefore need to rationalise available resources to ensure support is provided to the maximum number of targeted lot owners.

### **5.6 Hours of Business**

Decisions about specific hours of business will be the responsibility of the management, however it is expected that as a minimum, the service will be available Monday to Friday during business hours. Should the need arise and resources permit, thought may also be given to extended hours during the week and /or the service being available at some time on the weekend.

### **5.7 Staffing of the Service**

Staff employed to work in the Service will be employees of the organisation(s) approved for funding. While their employment conditions must comply with relevant Commonwealth and State laws, as required in the Service funding agreement, the Service management has responsibility for the day-to-day working conditions of the Service's employees.

The number of staff positions and their respective roles is a decision for the organisation funded to provide the Service commensurate with the funding provided to each organisation. The positions will need to encompass the compulsory areas of expertise (strata schemes collective sales and renewal scheme, strata schemes law, law, and dispute resolution). Consideration could be given to some positions being part-time, casual, job shared, or paid on a consultancy basis.

As a guide, the annual budget should allocate a minimum of around 70-75 per cent of the total grant to staff salaries and salary on-costs.

### **5.8 Target Group for the Service**

The principles of access and equity in service provision should be applied to the operation of the Service.

Where staff and time resources need to be rationalised, priority is to be given to those consumers who are disadvantaged by the circumstances outlined in 5.2 of these Guidelines.

The Service staff will provide advocacy in the form of Tribunal representation, and assistance in relation to filing of objections before the Court to those targeted strata lot owners who meet the approved guidelines.



### **5.9 Promotion of the Service**

Promotion of the Service may be through advertising in the press, website promotion and if wider promotion proves necessary, radio interviews or interviews with local print media could be considered. Promotion of the Service will contribute to create a client base for the Service.

Fair Trading and Land and Property Information will also have information on the funded service on their websites.

### **5.10 Independence of the Service**

The organisation(s) chosen to operate the Service will provide its day-to-day services completely independently of government and special interest groups.

In keeping with accepted standards of transparency and probity for the use of public funds, there will be reporting requirements which must be met and a funding agreement which ensures those standards are met. Providing there is compliance with the agreement and these Guidelines which form part of the agreement, the funded organisation(s) will operate autonomously.

Staff employed by the management of the Service are employees of the organisation(s) operating the Service.

### **5.11 Development of Protocols**

The organisations which are approved to operate the Service will need to liaise with Fair Trading, the Tribunal and the Court regarding appropriate referral protocols.



## 6. APPROVAL PROCESSES

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Funding applications to the Service are assessed by a Grants Assessment Committee which includes representatives from Fair Trading and DFSI. All applications are assessed against the aims and objectives of the program, the selection and eligibility criteria as set out in these guidelines. Recommendations will then be made through the Commissioner for Fair Trading seeking the approval of the Minister for Innovation and Better Regulation.

Applicants will be informed in writing of the decision regarding their application.

### **6.1 Nature of Grants**

Grants will be provided for the operations and management of the Service to provide legal advice advocacy services and representation at the Tribunal and the Court.

Grants to assist with an organisation's operational costs are not normally available. Grants funding for capital items will not normally be available. However, exceptions may be made where the applicants demonstrate that a capital item is essential for the successful conduct of the project.

One off establishment costs may be applied for. See the EOI documents for further information.

There will be no automatic re-funding and any proposal for further funding will be subject to a new application. Continued funding of the Service is dependent on the continued need and availability of funds.

### **6.2 Consultants**

If a consultant is to be contracted, the applicant should prepare terms of reference for the project, send these to at least three suitably qualified consultants seeking their expressions of interest, and arrange interviews to determine the most suitable consultant for the project.

The applicant will then be in a position to include in the application:

- a copy of the quotation and qualifications of the preferred consultant
- quotations and qualifications from at least two other consultants, and
- a copy of the terms of reference supplied to the consultants.



## 7. FUNDING

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### 7.1 *Funding Arrangements*

If the funding is approved, the organisation will be informed of the funding arrangements in writing and be provided with two copies of a funding agreement, one copy of which must be signed and returned. Only when the organisation and the Commissioner for Fair Trading have both signed, and one copy has been returned to Fair Trading, will the first payment be made.

### 7.2 *Payments*

Funding grants will be paid in instalments for the duration of the funded period. Continued funding is dependent on compliance with the requirements of these guidelines and the funding agreement.

All payments are made via electronic funds transfer.

If at any time during the grant period a funded person has not spent any part of the grant:

- the next grant instalment may be reduced by up to the unspent amount, or
- an amount up to the unspent amount may be required to be repaid.  
The required amount must be repaid within 21 days of repayment being sought.

The grant recipient must also submit, within two months of the end of the funding period, an audited financial statement covering the entire funding period, as required by the funding agreement.

Both parties must keep a copy of the funding agreement. These guidelines form part of the agreement between the grant recipient and Fair Trading.

### 7.3 *Variations*

Variations to funded project budgets, activities or timeframes must be approved by NSW Fair Trading. All such requests from grant recipients must be made in writing to the Commissioner.

Generally, variations may be considered for events which were unforeseen at the time of the project application and where costs cannot be met from within existing funding assistance. Variations with increases to funding levels will only be approved subject to availability of funds and will not exceed more than five per cent of the original amount granted unless special circumstances arise.



## 8. ACCOUNTABILITY

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### 8.1 *General Conditions*

Fair Trading is responsible for ensuring that government funds are appropriately accounted for, both in terms of effectiveness of outcome and financial management. Any individual or organisation receiving a grant will be required to accept certain conditions generally related to how the money should be spent and how the grant recipient will report.

Failure to continue to meet the program's eligibility criteria or to meet any aspect of the funding agreement or financial accountability requirements may lead to withdrawal of the grant. In such cases, the funded body will be advised and consulted prior to any action being taken. No further funding will be provided.

### 8.2 *Copyright*

Fair Trading reserves the right to claim copyright ownership in certain circumstances. In such cases, successful applicants will be advised of Fair Trading's claim on ownership when they are informed of funding approval for their project.

### 8.3 *Strata Collective Sales Advocacy Committee*

At the end of the funding period, grant recipients will be required to present an overview of the outcomes and benefits of the funded project to Fair Trading.

#### **Benchmarks**

As part of its ongoing performance-based funding model, Fair Trading has begun to implement a benchmark system to validate key aspects of the performance information it receives from service providers and improve assessment of service performance and client demand.

During the 2019-2022 triennium, these benchmarks will be refined in consultation with service providers to define key data fields/metrics. Reporting templates will be reviewed and updated to capture these benchmarks.

Benchmarks established via consultation between the provider and NSW Fair Trading will form part of the Program Guidelines and the related funding agreement.



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