

COMMISSIONS ARE ALLOWED: the ABCs of charging commissions

The ABC published an article today (21 March 2024): [High-profile strata company Netstrata caught charging excessive fees and taking kickbacks - ABC News](#), alleging “revelations” of supposed “kickbacks” received by strata management firms and the charging of “excessive fees”. The ABC proceeds to rail against the legal and commonplace practices of charging spotter’s fees or commissions – but even the ABC admit these are “permissible under NSW Law” in the opening paragraphs of their article.

The law allows commissions

There is nothing illicit or improper with the charging of spotter’s fees, commissions or bonuses. These are charged in many industries since time immemorial: many salespeople, recruiters and even freelance journalists and writers receive commissions or bonuses.

Whilst commissions have always been legal, widely accepted, and necessary for many industries to function, there have always been a small minority of detractors to commissions who would object to it regardless.

The law in NSW expressly allows strata managers to charge for certain commissions. Section 57 of the *Strata Schemes Management Act 2015* (NSW) prescribes what conduct is and is not an offence by a strata manager and expressly outlines that commissions are not breaches – in subsection (3)(b) – so long as the commission is either:

- a) *in accordance with the terms of appointment of the strata managing agent by the owners corporation, or*
- b) *has been otherwise approved by the owners corporation.*

It is perverse to suggest a commission is untoward where the law has been written to expressly permit it.

There is consumer protection

The ABC article concedes commissions are legal, but suggests legal reform is required. They have provided no good reason as to why this is necessary. Various references were made to alleged “misconduct”, but they and the legal expert they interviewed seem to be unaware

that in NSW, strata managers are **ALREADY** subject to the *Agency Rules of Conduct* as found in the schedules of the *Property and Stock Agents Regulation 2022 (NSW)*.

The Agency Rules also do not prohibit commissions. On the contrary the Agency Rules permit commissions, and expressly provide relevant provisions against the supposed “misconduct” alleged in the ABC article. In other words there is already protection for owners. The Agency Rules require a strata manager, or indeed any agent, to, amongst other things:

- act in the best interest of the client;
- avoid conflict of interest; and
- disclose commissions.

One thing the ABC article did point out is that strata living is significantly important to NSW and Australia and is likely to become more so in the coming years. Strata managers are essential to the success of strata living, and there is a well-established and delicate framework of laws with respect to owners corporations, individual lot owners, strata managers and contractors. This framework is necessary for strata living to continue and should not be upended on allusions or a misunderstanding of the rules and consumer protections already in place.

Conclusion

There are consumer protections with respect to commissions and as long as those are complied with commissions are wholly permitted and allowed.