

## Our commitment to you and the management rights industry

By John Mahoney

Mahoneys has a long proud history of supporting the Australian management rights industry – whether that be acting for clients or representing the industry through ARAMA.

A key to our success has been the quality of our team, and our unwavering commitment to providing market leading legal services.

Aside from having the largest management rights team in Australia, our lawyers have collectively over 75 years' experience in the management rights industry.

As part of our ongoing commitment to the management rights industry I am pleased to announce the following appointments:



**Amy McKee** was promoted to Partner on 1 January 2020. A long standing member of Mahoneys Gold Coast team, Amy has been a practicing lawyer for over 13 years and specialises in management rights and motels.



**Amy O'Donnell**, formerly a Partner at another management rights firm, joined Mahoneys last week. Amy is a very experienced property lawyer, having practiced law for over 20 years, and specialises in management rights, motels and commercial property.

## You Cannot Be Serious!

By John Mahoney

In the many years in which I have been practising in the area of management rights I have heard some amazing, even unbelievable, stories. However I was genuinely shocked by something a client recently rang me about to discuss.

My client, of Chinese origin, was a manager at a complex in Brisbane for a number of years. He enjoyed a good relationship with almost all of his owners and tenants. We were successful in achieving an extension of the term of the agreements and the Gallery Vie changes such as the support he had amongst the owners, despite dealing with somewhat difficult body corporate lawyers.

When my client sold some months later with the same lawyers acting for the body corporate the transaction took longer than was necessary but we eventually obtained the consent of the committee to the assignment and went about having the deed of assignment executed by the relevant parties. Because of the delays on the part of the committee and the body corporate's lawyers we only had a couple of days before settlement to have the deed executed.

My client received a call from the husband of the chairperson who asked my client to go to their unit to have the deed signed. When my client arrived the chairperson's husband demanded \$10,000 cash from my client before he would hand over the signed deed. My client was taken aback and was at a loss to know what to do. Fearful that if the signed deed would not be handed over and the sale would be jeopardised my client and his wife went to their bank, each withdrew \$5,000 from each of their accounts (the most cash the bank would allow each to withdraw at the one time) and paid it to the chairperson's husband.

My client wondered whether he was being taken advantage of because he was Chinese, whether this type of demand was common and what if anything he should do about what had happened. My client tells me he agonised over the matter until many months later when he called me to tell me what had happened. My client did not seek my advice nor did he want to sue the person to whom the money was paid. Rather, he wanted me to tell someone about what had happened and do what he could to make sure it did not happen to others.

Whilst my initial reaction was to encourage him to go to the police and have the person charged with fraud or extortion, my client was genuinely concerned about the impact that might have on the current manager and also about the trauma and uncertainty he would face in proceeding with the charges. A person who extorts another is likely to be someone who will lie to protect themselves and given the passing of considerable time since the event itself, the credibility of my client's evidence would be open to challenge. In the end my client decided to leave the matter rest but asked if I would publicise his experience so that others might be aware of it possibly happening to them and what to do if it did.

I hope I am correct in my expectation that this was an extremely rare criminal act but if anyone finds themselves in such a situation you should immediately report it to your lawyer who will advise if and how best to deal with the matter, how you might gather evidence of the extortion and how to report it to the police. Whatever the threats made I would strongly discourage you from giving in to the demands.

# Statutory Remuneration Review Process

By Ben Seccombe

We are constantly surprised by how few people are aware that the *Body Corporate and Community Management Act (BCCMA)* contains a right to review either:

- (a) the duties to be carried out under a caretaking services contract; or
- (b) the salary paid to the caretaker under such a contract.

This right exists regardless of whether or not there is a similar contractual provision in the contract.

The review mechanism is aimed at (and confined to) new agreements (i.e. the first caretaker appointed by a body corporate) and must be commenced within a strict timeframe stipulated by the BCCMA.

It is often the case that caretaking services contracts are drafted by developers and have little regard to the actual needs of the scheme. This can result in a disconnect between what is really needed for the scheme and what the agreement requires. In those circumstances, a duties review can be a good option for bodies corporate and caretakers alike, in that it will align the duties in the agreement with the needs of the Scheme.

Similarly, there is often a disparity between the salary paid to a caretaker and the duties under the agreement. This is where a salary review is useful.

Mahoneys has assisted many caretakers to take advantage of this mechanism where they are significantly underpaid by reference to the

duties required of them. In *Drift Palm Cove Mahoneys* secured a salary increase of over \$85,000.00 per annum for the caretaker – which is still the largest increase ever obtained for a caretaker under this review mechanism.

The review process is complex and there is a particular set of conditions to be satisfied before either party can request a review. If the process is not followed strictly, the right to review can be irretrievably lost.

Caretakers of newly established schemes are encouraged to consider this option, especially if their agreement does not contain a regular market review mechanism. The statutory right of review could be your only chance to procure a salary increase for the life of the agreement.

# Remember To Check Your Option Dates

By John Mahoney

Unfortunately, we are still seeing instances of managers failing to exercise the options in their management rights agreements.

An option gives the manager the right to extend the management rights agreements beyond the initial term of the agreement.

The consequence of not exercising an option correctly, by the due date, can be significant. Specifically, the agreements will expire at the end of the term and you will no longer have the right to conduct the caretaking and letting business.

So, we encourage all managers to check what the agreements and deeds say and diarise the

option date/s, remembering to allow time to liaise with the Body Corporate. If you are not sure what to look for, where to look, or don't understand the terms of the option, speak with a lawyer now.

If you do find yourselves in a situation where you missed an option date you should contact us immediately.



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## CPI increases

Most caretaking agreements provide for CPI increases. We often see that managers have not claimed these increases for several years! The following is a table of the Brisbane All Groups CPI figures.

For example, if your remuneration started at \$100,000 in October 2014, the correct calculation for the October 2019 increase based on Brisbane All Groups CPI would be \$100,000 x 115.5 (i.e. the last index figure before the review date) / 106.5 (i.e. the last index figure before the commencement date) = \$108,450.

Mahoneys has assisted many managers in having their remuneration increased to market level. Up to date figures can be found at <https://www.qgso.qld.gov.au/>

	Mar	Jun	Sep	Dec
2006	83	84.5	85.2	85.1
2007	85.5	86.7	87.5	88.4
2008	89.6	91.1	92.4	92.2
2009	92.4	92.9	94.2	94.5
2010	95.2	95.9	96.9	97.4
2011	98.6	99.6	99.9	99.7
2012	99.9	100.5	101.6	101.9
2013	102.0	102.5	103.8	104.6
2014	105.2	105.8	106.5	106.7
2015	106.7	107.4	108.1	108.5
2016	108.5	109.0	109.7	110.2
2017	110.5	111.0	111.4	112.3
2018	112.4	112.9	113.4	114.0
2019	114.1	114.8	115.5	116.3



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