

Mahoneys Fighting For Managers

By John Mahoney

Many readers will have seen in the press that Mahoneys recently launched legal action in the High Court on behalf of a number of businesses to force the opening of the Queensland border on the grounds that the closure was unconstitutional. It is possible that this, coupled with pressure from many other sources, will see the opening of the border by 10 July, much sooner than the Premier's previous statement that it was likely to be October. In recent weeks Mahoneys have worked hard behind the scenes to assist the management

rights industry generally and a large number of our clients individually. I facilitated a meeting between the industry's valuers, accountants and others to put in place a valuation regime which has protected the values of permanent management rights businesses, I and others in my team has participated in various COVID-19 webinars hosted by ARAMA and we have together provided free advice and guidance to many clients adversely affected by COVID-19.

Whilst confident that the proven resilience of the management rights industry will see it bounce back, I am realistic enough to know the devastation which the tourism industry has experienced, the much greater economic shock the rest of the world has suffered and the unlikely return of international visitors for many months the road to recovery for short term letting businesses will be long and difficult. I and my team will continue to do all we can to assist our clients to navigate that road.

Short Term Letting Businesses – Are You Good To Go?

By Amy McKee & Amy O'Donnell

Each day is looking better than the last. The phones are ringing more in the last week than they have in the last 2 months and Queensland is moving into stage 2 of the relaxation process ahead of schedule. That means that everyone is working frantically, preparing COVID Safe plans, hiring staff (or re-hiring staff that were previously terminated), and generally working out the new normal.

This, of course, remains a rapidly evolving situation with continual policy announcements from local, state and federal governments, so guidance is often changing and we encourage you to continue to monitor the source of all announcements (in particular the Queensland government [website](#) and industry bodies such as [ARAMA](#)).

The purpose of this article is to highlight some of the key issues that operators should be addressing right now.

Good to Go

The new tourism campaign announced is the "Good to Go" campaign, aiming to encourage Queenslanders to explore their own backyard. It is envisaged that this program will eventually extend to interstate travel (when the border issue is resolved). We encourage all operators to get involved where they can and have your COVID Safe documentation in place. With that you will be able to use the logo and promote your business as

being "Good to Go". There is more information to be found on Tourism Queensland's [website](#).

Safe work

All businesses must have a COVID Safe plan. There is an abundance of information about in relation to what these plans require and we encourage you to be familiar with the many resources available from [ARAMA](#) and [Safe Work Australia](#), and stay up to date!

There are approved industry plans that will need to be complied with, and there may be several if your business crosses several industries.

The most common plan for our operators to understand is the [Queensland Tourism and Accommodation Plan](#). ARAMA has also prepared a COVID Safe plan for use by its members, which takes the guiding principles of this plan, so that operators can adapt them to suit their schemes particular needs.

We would expect that this will be a new normal and need to be incorporated into your business for many months (perhaps indefinitely). You need to take a proactive approach to ensure compliance with the approved plans.

Body corporate facilities

You should keep in close contact with your committee about the re-opening of and signage

required for any common property facilities, particularly the recreational areas such as the pool and the gym. Liaise closely with and follow the directions of the committee. Whilst the numbers have now increased, the guidance in our [article](#) about re-opening body corporate facilities remains relevant.

It is likely that the body corporate will need you to undertake additional duties not specified in your caretaking agreement (such as cleaning at greater frequencies or carrying out sanitising) for some time to come to comply with their own COVID Safe plan.

Your committee

It remains important for you to be in close, regular contact by phone or email with your committee or its nominated liaison person. Decisions still need to be made in relation to the scheme's compliance with COVID Safe plans in relation to common property areas. You should try and involve yourself in that process as much as you can and be proactive. You, the committee and the owners will all need to work together to get the complex back up and running and back to business.

Moving forward

As we mentioned, this situation continues to evolve, and hopefully the next announcement will be about the borders re-opening and you being

able to welcome interstate guests. Until then we need to embrace each relaxation, use it to our advantage and keep on making lemonade.

As you will appreciate, these insights are general guidance only and should not be relied on as legal advice. If any of these issues are affecting your specific business, please contact Mahoneys

to obtain timely and practical legal advice on the actual issues you are facing. Until then, we hope that your phone continues to ring and the bookings start to fill up.

Managers Must Not Project Manage

By John Mahoney & Amy McKee

In Queensland individuals and companies must hold a QBCC licence to carry out **building work** valued at over \$3,300.

Most building managers would assume that what they do isn't carrying out building work however that may not necessarily be the case. The scope of **building work is not limited to actually performing the work** but also includes providing administration, advisory, management or supervisory services for building work other than simply scheduling the building work. This **may include:**

- taking payment or arranging payment of subcontractors;
- arranging labour or arranging and conducting on-site meetings and inspections;
- coordinating the scheduling of work for building contractors even as an agent for another person; and
- supervising building work.

If undertaking such work a **"builder – project management services"** licence is required. This class of licence is described by the QBCC

as a "client-side" project manager. There are a number of exceptions to the requirement to obtain this licence which unfortunately cannot be relied upon in a management rights context.

This licence is **not easy to obtain**, requiring a degree in quantity surveying, engineering, architecture or construction management along with a minimum of four years' experience across the scope of work. Not many managers, if any, will hold or be able to obtain this licence!

It is quite common for a building manager to organise and supervise licenced tradespersons and contractors for work on the common property. In many cases, this will not require a licence because the value of the work is \$3,300 or less. **If however the total cost of the work is over \$3,300 a building manager should not arrange and/or supervise the work.** Importantly the value of building work is the total cost of having the work carried out including materials, labour and GST regardless of who supplies the materials. If work is to be carried out in stages under a series of separate contracts the value of the works is the total value of all of those contracts.

Sourcing quotes for building work over \$3,300 will not require such a licence and whilst a manager might express an opinion about the quotes sourced the manager should not provide advice about that and the committee, not the manager, should make any decision about what quote/s to accept.

Most management rights agreements contain an exception to the duties **excluding** anything that requires the skills of a specialist tradesperson

or contractor. No doubt, the necessity to hold a licence of the type described above would exclude a building manager from arranging and/or supervising building works with a total value of over \$3,300 and a manager would be entitled to refuse to do this.

In addition to the common property, building managers often **assist lot owners** with repairs, maintenance and renovations to lots in their letting pool. Again, managers need to assess the total cost to determine whether or not they should assist owners. At Mahoneys we have seen a manager **prosecuted** by the QBCC for arranging and supervising bathroom renovations for owners.

When assessing the total cost of the work the cost of individual tradespersons cannot be isolated to keep the work below the threshold. The manager must undertake an honest evaluation of the scope of works. Is the toilet simply being replaced or is the bathroom being renovated? Is the lobby being painted or are all common property areas being painted over time?

Many bodies corporate will wrongly consider the arranging and supervising all works on the common property to be part of a manager's role and refusing to do so has the potential to cause **dispute**. Managers might consider taking a proactive approach, assist where they can and when they cannot advise the body corporate that the work requires this class of licence and recommend a contractor with the appropriate licence who can assist them. At Mahoneys we can assist to prepare information for circulation to committees or navigate a dispute should one arise.



Brisbane office

L 18, 167 Eagle Street
Brisbane Qld 4000

p 07 3007 3777

f 07 3077 3778

Gold Coast office

L 2, 235 Varsity Parade
Varsity Lakes Qld 4230

p 07 5562 2959

f 07 5575 7803

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For latest CPI figures go to

<https://www.abs.gov.au/ausstats/abs@nsf/Latestproducts/6401.0Main%20Features7March%202020?opendocument&tabname=Summary&prodno=6401.0&issue=March%202020&num=&view>

For example, if your remuneration started at \$100,000 in April 2016, the correct calculation for the April 2020 increase based on Brisbane All Groups CPI would be $\$100,000 \times 116.2$ (i.e. the last index figure before the review date) / 108.5 (i.e. the last index figure before the commencement date) = \$107,096.77. Mahoneys has assisted many managers in having their remuneration increased to market level.



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