

# Management ONE

The quarterly newsletter from The Management Rights Lawyers

## Management rights term issue – where are we now? by Matthew Manz

As readers will be aware, as part of its wide ranging review of the community titles legislation, the Queensland Government has established a Community Titles Legislation Working Group (CTLWG) to provide advice on key community titles related issues. Part of that advice will include guidance on something that is dear to all of our hearts - the term of caretaking and letting agreements.

It will not have gone unnoticed by most readers that there has been significant debate and public comment on the topic. Unfortunately some of the more extreme arguments have served to cast significant doubt in the minds of some management rights operators and buyers about the future viability of management rights businesses.

I am not going to go into the various arguments here, but it's probably fair to say that while some of what has been said has been fanciful and one sided, overall there has been some thoughtful and well balanced comment and input. For that reason I'm confident that a resolution will be reached that balances the interests of all of the stakeholders involved. Unfortunately it's going to be some time before we get there. Currently, submissions are still being made to the CTLWG with a report to the Government likely to be some time away. Various interest groups are also making representations to the responsible ministers and others

in Government. That means that any changes to the legislation may well be 1 to 2 years away.

It's a state of flux that none of us are happy with but one we will have to live with for the time being.

While there is never any certainty in dealing with the Government I am hopeful that the outcome will look something like this:

### 1. Existing buildings/agreements

Given the devastating financial impact that a reduction in the term in such buildings would have, it is hoped that any agreements relating to existing schemes would remain subject to the current rules of the module that applies to them. That would mean that existing buildings which can have 25 years would continue to be able to have 25 years indefinitely. Those buildings restricted to 10 years would continue to have 10 years.

### 2. New buildings

- Few if any changes to standard module buildings, so continuation of the maximum 10 year term.
- Tighter controls over what buildings the original owner/developer can place in the accommodation module.
- For accommodation module buildings, a likely maximum initial term for any caretaking agreements

authorised during the original owner/developer control period to be 10 years (potentially longer for letting agreements), but with the potential to extend that to up to 25 years once the developer no longer controls the body corporate.

- If a developer has entered into an off-the-plan lot sale for a scheme that is yet to be established when the new rules come into effect, the existing rules of the module and agreements disclosed as part of that sale will apply.

Of course, no one can be sure that the above will be the final position but at the moment that is my best guess.

As managers there are a couple of things that you can do. The first is to do the best job that you possibly can. Buildings with excellent managers work for everyone/everything involved, from the owners down to the building itself. The second thing you can do is to join and support ARAMA. If you weren't already aware, ARAMA is part of the CTLWG and is your voice in that group.

As I mentioned above, we are currently in a state of flux, however I am quietly confident that when everything is said and done an outcome will have been reached that equally balances the interests of all those involved, provides appropriate protection for owners maintains the value of existing businesses and ensures the viability of new businesses.

## So what exactly are your duties? by Will Kenny

Ascertaining the extent of your caretaking duties and when you can carry out and be paid for additional duties may not be as straightforward as first appears. Common disputes we often see between caretakers and bodies corporate centre on when caretakers can charge for work which extends beyond the duties in the caretaking agreement and when the services of a tradesman or contractor can be relied upon.

It is important to understand the exact extent of your caretaking duties and what type of work (if any) is excluded from those duties. Ideally your agreement should not require you to perform any work of a specialist nature which include any duties which reasonably require the services of a skilled tradesperson or specialist contractor. While there is a distinction between "tradespersons" and "specialist contractors", it should not be of particular concern if your agreement does not provide an exclusion for both. Where a reference is made to "tradesman", adjudicators have applied a wider construction by not limiting the reference to readily identified tradesmen such as plumbers, electricians and the like.

If there is such work which requires a tradesperson or specialist contractor it will not necessarily be the case that the caretaker can engage one to carry out the work involved. That will depend on the terms of the caretaking agreement. Typically there will be provisions which allow the caretaker to expend up to a specified amount on any items necessary to carry out the duties. Such provisions are usually designed to allow the caretaker to obtain, on behalf

of the body corporate, materials and equipment necessary to perform duties. It is unlikely that such a provision allows a caretaker to engage the services of contractors/tradespersons without body corporate approval. However some caretaking agreements do allow for that and the provisions should be carefully considered.

What if such a duty which is not the responsibility of the caretaker is one that the caretaker can in any event perform? The same question can be posed for duties that do not require tradespersons or specialist contractors but are beyond the duties specified in the caretaking agreement. Can the caretaker just do them and charge the body corporate?

It should never be assumed that a caretaker can charge for such additional work. You should first check whether your agreement has provision for additional work to be performed for an appropriate fee and what requirements or conditions there are to carry out and be paid for such work.

The practical issue we see is that caretakers will often perform work and then charge the body corporate without first having obtained authority or agreement to do so. Unless there is specific authority in the caretaking agreement in this regard, which would be extremely rare, a caretaker can never just do the work and charge for it. Apart from a body corporate having no contractual obligation to pay for such work it presents a number of problems. Apart from the actual ability and expertise of the caretaker to perform the work to the appropriate standard, the work itself may be of a type that requires

a licensed tradesperson, giving rise to defect liability and insurance issues for a body corporate.

If you are at all unsure about any particular duties that you may or may not be required to perform, you should consider the following:

- Does the work in fact form part of your caretaking duties (specific and general)? If so it is your responsibility and is covered by your remuneration.
- If the work is beyond your caretaking duties but does not require a tradesperson or specialist contractor then before you can do the work and charge the body corporate for the work you need to reach agreement with the body corporate about that – specifying the work to be performed and the amount you can charge for the work. If you do not do so the body corporate has no obligation to pay you for the work.
- If the work is beyond your caretaking duties and does require a tradesperson or specialist contractor then before you arrange for one check what approval is required from the body corporate. Only if your caretaking agreement clearly allows you to engage such tradesperson or contractor, and expend up to that amount, should you so engage them.

As is the case with any caretaking agreement, the devil is in the detail. Make sure you have a clear understanding of what your agreement requires of you, in what circumstances you can perform and be paid for additional duties and when you are permitted to engage the services of others.



### Brisbane office

L 18, 167 Eagle Street  
Brisbane Qld 4000

p 07 3007 3777

### Gold Coast office

L 2, 235 Varsity Parade  
Varsity Lakes Qld 4230

p 07 5562 2959

Liability limited by a scheme approved under Professional Standards Legislation.

## For latest CPI figures go to

[Click here for Brisbane All Groups CPI figures](#)

You will need to click on "All groups CPI, index numbers(a)" to see the detail. For example, if your remuneration started at \$100,000 on 1 September 2016, the correct calculation for the 1 September 2022 increase based on Brisbane All Groups CPI would be  $\$100,000 \times 127.9$  (i.e. the last index figure before the review date – the June 2022 quarter) / 109 (i.e. the last index figure before the commencement date – the June 2016 quarter) = \$117,339.45. Mahoneys has assisted many managers in having their remuneration increased to market level.



Buying/selling  
assistance



Off the plan  
implementation



Renewal  
strategy



Dispute  
resolution

[www.mahoneys.com.au](http://www.mahoneys.com.au)