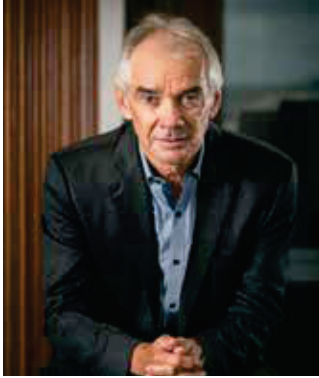


The length of the term is not the problem



By John Mahoney,
Mahoneys

The campaign by opponents of the management rights industry to have the body corporate legislation amended to reduce the term of management rights agreements has been the subject of much publicity, in Resort News and elsewhere.

Those opponents would have us believe that most community titles schemes have poorly performing managers and that reducing the term of their agreements to three, five or 10 years (depending on which opponent you listen to) would solve all the problems.

The campaign of course ignores the fact that the overwhelming

majority of schemes with management rights have very competent managers who work cooperatively with their body corporate, diligently carry out their caretaking duties for a fair remuneration and work hard to achieve the best possible returns for their investor owners. The campaign also ignores the fact that so reducing the term would decimate the businesses of all managers.

There are of course a small minority of managers who through poor performance cause problems for their body corporate. However, as a recent panel discussion at a breakfast gathering hosted by the Australian Building Management Accreditation (ABMA) showed, these problems are not the result of the length of the term of the agreements and nor will they be fixed by a reduction in the term.

After hearing from a lawyer pushing the term reduction argument a panel discussion took place, the panel consisting of two chairpersons of large bodies corporate (one of whom supported the term reduction campaign) and a barrister who mediates disputes between bodies corporate and managers. Those in attendance at the breakfast gathering were a mixture of supporters and opponents of management rights.

After considerable, and sometimes heated, and passionate, debate and discussion, the conclusion reached was that the problem of a poorly performing manager was not a consequence of the term of the agreement but rather the lack of clarity in the agreement around the duties (leading to a lack of accountability) and the failure of the body corporate to properly assess an incoming manager's competence. Neither of these problems will be fixed by reducing the term.

Opponents also complain that terminating a management rights agreement of a poorly performing manager through QCAT is impossible, so a shorter term would obviate that problem, the agreement would simply run out. They point to various instances where bodies corporate have spent vast amounts of money trying to terminate agreements with QCAT ruling against termination.

I suggest that they should instead be looking at the way those bodies corporate and their lawyers conducted those actions, rather than blaming the system. The legislation and the agreements themselves set out clearly the circumstances and processes to follow to allow a body corporate to terminate such agreements. We so often

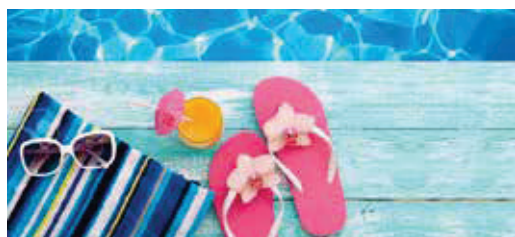
see bodies corporate launch into QCAT proceedings without following those processes. No wonder they fail.

Of course, there are other ways that a body corporate with a perceived poorly performing manager can deal with the problem which does not involve expensive litigation. Consultation and mediation, rather than confrontation and aggression, are better tools to deal with the problem and will likely lead to a better outcome. Unfortunately, such an approach is not one that finds favour with a dictatorial committee or litigious lawyer.

Whilst the outcome of the legislation review and the campaign by our opponents is still some time away I am quietly confident that the arguments and proposals that ARAMA has been putting forward will be well received and that there will be no reduction in the terms of existing agreements. There may well be some limits placed on the term of agreements being put in place by developers, more opportunities for a body corporate or a manager to review duties and remuneration, and measures to increase accountability – all of which are things that will improve the industry without decimating many hundreds of businesses. ■



Holmans.



Accountants to the accommodation industry.

Call 07 5430 7600 or visit holmans.com.au

Tony Rossiter: 0414 228 607
trossiter@holmans.com.au

Lel Parnis: 07 5430 7609
lparnis@holmans.com.au

