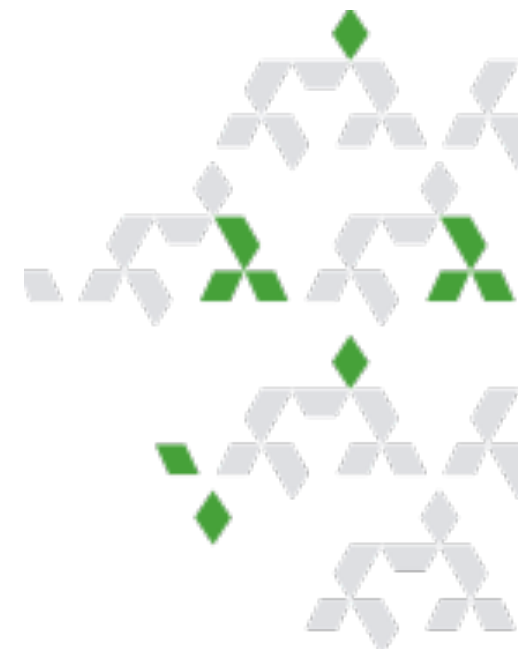




Queensland bodies corporate – what to expect in 2023

What can we expect in 2023

1. Management rights changes to be front of mind
2. Insurance claim delays
3. Defects and water damage



Management rights

What's the issue?

- Discussions and lots of “noise” around changing the term limitations of management rights agreements in Queensland

What does that mean?

- Management rights agreements are the traditional caretaking structure for a building where agreements are entered into to contract out the maintenance of the common property and letting of lots within the scheme to a third party
- Currently there is a maximum term limitation imposed on a management rights agreement.



Management rights

What are the current rules?

- 10 years under the Standard Module
- 25 years under the Accommodation Module or Commercial Module

What are the rumours?

- That the Government is considering changes to the modules to introduce new rules altering the maximum term – most likely to reduce.

Impact?

- Generally accepted that it is negative for management rights
- Has slowed industry a little – a wait and see approach

Management rights

Who supports this?

- There are those that are ambivalent
- There are those that want term reduced – anti-management rights campaigners
- There are those that want it to stay the same – developers, existing managers, ARAMA, banks, those associated in the industry (valuers, agents and the like)
- No-one is asking for it to be extended. Probably a recognition that 25 years is a long time



Management rights

What is likely to happen?

- This is the \$million question
- Maybe nothing – Government does not often change body corporate legislation – particularly when developers and banks don't support the change
- Maybe something small
- Maybe something large
- Probably something in the middle



Management rights

Potential solutions

- Note – these are broad and bold guesses and nothing more.
- 1. Reduce all agreements to a maximum of 10 years. Would mean very little difference between Standard and Accommodation modules
- 2. Reduce Accommodation Module to 15 or 20 years
- 3. Change threshold to increase term to a special resolution or majority resolution
- 4. Start with 10 years but allow schemes to choose to increase higher up to 25 years
- 5. Grandfathering provisions – this would protect all existing agreements that were already in place prior to a particular date

Management rights

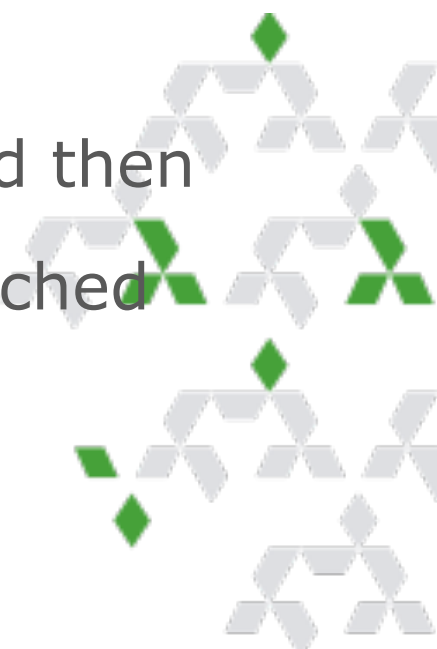
Some observations

- The issue for those in favour of the change is usually centred around a poorly performing caretaker. This has nothing to do with the term of the agreement. The unfortunate situation is that term is usually the only leverage a body corporate has in a disputed situation
- What has not been focused on enough is improving the performance management thresholds whereby RANs were ineffective and too risky not to dispute
- Needed to be some form of middle ground that allowed for meaningful solutions that did not destroy the value of the existing business but gave the body corporate the result it really is seeking – a performing manager.
- Could make it easier for the move on and forced assignment provisions to be utilised or remuneration being tied to performance.

Management rights

Summary

- Has always been these discussions
- But now more realistic that something may happen
- Will be interesting to see what is proposed, if anything, and then how developers and banks react
- Would be a significant change as has been relatively untouched



Insurance claims

- Insurers “flooded” with claims since February 2022
- The rain exposed probably every pre existing crack and leak in Brisbane
- Many claims that have been made are still not finalised – lots of ancillary expenses – loss of rent, etc.
- Cost to insurers (and the industry is significant)
- Repairs are being delayed due to lack of labour and material supply as well as increased costs

Insurance claims

- We have seen a number of claims that are being refused based on interpretations of the policy wording. Some of these claims may not have been looked at or scrutinised to the same extent prior to the floods
- Leading to disputes:
 - with the insurer about whether they have properly disclaimed liability under policy terms
 - between owners and the body corporate due to delayed repairs – this has been a significant source of contention in the last 12 months

Insurance claims

- Irrespective of the insurer's position the body corporate is still obliged to comply with the BCCMA
- One of the obligations in the BCCMA is to ensure that the BCCMA is in good condition
- That obligation is absolute and is not avoided because the insurer has not arranged for the repairs yet, the insurer has refused to provide coverage or there is a defect the builder is responsible for
- In those circumstances the body corporate has failed to meet its obligation as soon as the common property is not in good condition.
- Owners are entitled to expect the body corporate to comply with its obligations and can take action in the Commissioner's Office to compel the body corporate to carry out repairs. Issue is when those actions void insurance coverage

Insurance claims

- If the insurer has not organised repairs – puts the body corporate in a tough position where it is failing to meet its statutory maintenance obligations but may become liable for increased repair costs if it carries out the work itself
- If the insurer is disclaiming repairs – the body corporate needs to seek advice on whether that decision is correct and arrange the repairs regardless (and then seek to hold the insurer responsible)
- If there are existing defects the responsibility of the builder – the body corporate still needs to arrange for repairs and pursue the builder

Insurance claims

Solutions

- As an owner – best bet is to take early action and get your application in with the Commissioner's Office sooner rather than later. Important to have evidence connecting the damage to the cause and details of all the costs that have been incurred
- As a body corporate – need to ensure that the terms of the policy indemnification are being met by the insurer and, if entitled to coverage, those rights are being progressed with the insurer as soon as possible. They typically do not react unless being pressed firmly

Defects and water damage

Very similar, and related, to the last topic

Reality is that they exist and they create issues for everyone

Biggest takeaway from today must be **early action**

There are usually rights that exist – but those rights are commonly lost due to time limitations

What is a building defect?

- There are a number of commonly used definitions.
- But generally accepted to be:

"Work that is faulty or below a reasonable standard of quality."

How does the body corporate obtain any rights?

- Construction contract between the developer and the builder. Body Corporate is not a party to this
- That would mean the developer has the rights for any defects under the construction contract
- BCCMA transferrers the developer's rights to:
 - the body corporate (in relation to common property)
 - owners (in relation to their lots)

Developer

- The developer is not responsible for building defects.
- The developer is responsible for providing documentation to the body corporate to allow the body corporate to pursue its rights – getting these documents is always the starting point.
- Document should be handed over at the scheme's first general meeting - but does not always happen.

Handover information



- New-ish BCCM regulations stipulate what documents need to be provided. It now expressly includes:
 - *plans, specifications, diagrams and drawings*
 - *contracts for building work*
 - *any warranty documents*
- Before any action can be taken you must get a copy of the building contract and construction documents.

Avenues available to the body corporate

- QBCC
- Construction Contract

QBCC

- Can lead to an investigation into the defects.
- QBCC has the power to issue directions to rectify defective building work.
- Failure to do so can lead to black marks on licenses.
- Doesn't always motivate the builder – who can change entities.

Time frames

- Important timeframes apply:
 - complaints must be made within 12 months of becoming aware of defect;
 - complaints must be made within 12 months of work being completed for minor defect;
 - complaint must be made within 6 years and 6 months of major defect,

Home warranty insurance scheme



- Won't regularly apply as only for buildings no more than 3 storeys high.
- If less than 3 stories – can be useful but need to get on top of an application early. Must be lodged :
 - If structural – within 6.5 years of the earlier of contract date, work starting or paying insurance premium – and – lodged within 3 months of noticing the defect
 - If non-structural – must be aware within 6 months of work being completed – and – lodged within 7 months of the work being completed

Construction contract

- Enforcing the developer's rights under the construction contract.
- Generally starts with letters of demand and can lead to court action.
- Strict timeframes apply – particularly 6 years from practical completion.
- Also need to ensure that builder is worth pursuing (ie are they solvent).
- Need detailed evidence – independent defect assessments are crucial.

Defect assessments



- Reports intended to evidence any defects that exist.
- Important that the right expert is used and they are able to produce evidence of defects.
- New-ish BCCM regulation modules require the body corporate to consider obtaining a defect assessment at the second AGM after registration (or following registration of new stages).
- No restrictions on considering obtaining a defect assessment at any other time.

Role of body corporate and onsite managers



- Not generally their responsibility.
- Have a working understanding of the process
- Put the committee in touch with experts in the field that can enforce the body corporate's rights including:
 - defect assessors;
 - specialist repairers; and
 - lawyers.
- We have a guide to assist – available following this webinar

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