

INCREASING YOUR REMUNERATION

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Some time ago I wrote an article about the first successful action taken by a resident manager to have the remuneration reviewed and increased under the review provisions of the Body Corporate and Community Management Act. In that case, as the solicitors for the manager, we were able to achieve an increase in the manager's remuneration of more than 60%.

Since that time we have successfully run many other cases where we have been able to achieve for our clients significant remuneration increases. At the same time we have observed a number of decisions of the Body Corporate Commissioner's Office and the Queensland Civil and Administrative Tribunal (QCAT) rejecting claims for increases because of technical deficiencies or other noncompliance with the provisions of the legislation.

In those unsuccessful cases, it seems that many managers and their lawyers failed to appreciate and comply with the quite prescriptive requirements set out in the legislation.

The particular section of the Act sets out the requirements for a review. Paraphrasing the relevant parts of that section, it applies if a Caretaking Agreement -

- was entered into after March 4, 2003;
- was put into effect while the developer had control over the Body Corporate; and
- the developer no longer has control over the Body Corporate.

Whilst either the manager or the Body Corporate can instigate a review, invariably it is the manager who does so as it is rare that a new Agreement would provide for an excessive level of remuneration such that it might be reduced on formal review.

This article does not seek to examine the detailed provisions in the Act about the review process. Suffice to say that these provisions are complicated and require careful thought and action by a lawyer who fully understands the intricacies of the procedures required. This is particularly so where there has been an assignment of the relevant Agreement as the new manager may not be entitled to a review in certain circumstances, as a couple of unsuccessful managers have found out to their detriment.

Unlike those managers who have failed to successfully secure an increase in their remuneration, managers should not assume that it is just a matter of getting a report done by an independent expert and providing it to the body corporate. There is much more to it than that.

Importantly the review procedure allows for a review of not just the remuneration but also of the duties. When conducting review negotiations with bodies corporate we have been able to incorporate a review of the duties into the remuneration review to successfully negotiate a higher remuneration.

Apart from the review process available under the legislation, many Agreements

have built in review procedures. We have also run a number of cases seeking remuneration increases under such provisions. In one particular building we were able to use a most unusual provision to secure a significant increase only to have the body corporate challenge the specialist adjudicator's decision on appeal to QCAT. Not to our surprise, the body corporate's challenge was rejected and the increase remained in place.

However, like the statutory review process, successfully pursuing an increase under review provisions in an Agreement requires sound legal advice from an experienced lawyer with a sound understanding of the process and good negotiating skills.