The Future of Management Rights

By Gary Bugden*

Some would say that the time has finally arrived to start the phasing out of management rights in Queensland. This article examines the merit of that argument.

For over 30 years Queensland bodies corporate, Governments and the Courts have battled to cope with the challenges presented by the concept of management rights. As far back as the early 1980's the body corporate for *Thornton Towers* on the Gold Coast acted to sack its on-site manager and establish its own on-site rental program.

Arguably, every year since then, some body corporate somewhere in Queensland has been battling with its on-site manager over performance or other contractual issues. Over the same period successive Queensland Governments have changed body corporate legislation in an attempt to impose legislative solutions to a range of problems while the Courts have trod the delicate line of weighing up the rights and obligations of parties to management rights disputes.

Legislative intervention has resulted in Queensland body corporate legislation growing from 178 pages in 1980 to 1,061 pages in 2011. The following changes were in some way related to management rights issues at the time they were introduced:

- Restrictions on the terms of management contracts
- Purchaser disclosure requirements
- Multiple regulatory environments in the form of different regulation "modules"
- Restriction on proxy votes
- Ability to prohibit proxy voting
- Restrictions on contractual provisions relating to proxies
- Restrictions on powers of the committee
- Restrictions on exclusive use grants to onsite managers
- Restrictions on improving common property
- Special procedures and materials for meetings considering management rights
- Restrictions on successive motions on management rights issues
- Introduction of secret ballots
- Prohibitions on certain payments on transfer of management contracts
- Introduction of a transfer fee
- Tailored dispute resolution processes and remedies
- Codes of Conduct
- Implied terms in management contracts
- Restrictions on the cancellation of management contracts
- Forced assignment of management contracts.

While it would be an exaggeration to suggest that all of the additional 900 odd pages of legislative changes were management rights related, it is clear from the above list that management rights issues were a very significant contributor to the proliferation of the legislative environment over the past 30 years. Sadly, it seems clear that:

- This proliferation has not succeeded in resolving management rights issues.
- The complexity introduced by the above changes has made life substantially more difficult for bodies corporate who have no involvement with management rights.
- The Queensland Government is contemplating even more changes.

This raises a number of questions. Will more changes resolve the problems? Has the time arrived to abolish management rights in Queensland? Should they be totally abolished or should they be restricted to genuine hospitality applications? How can they be abolished without interfering with existing rights and obligations?

We must avoid an emotive response when answering these questions. The facts are these:

1. Many (probably most) management rights schemes created in recent years are totally inappropriate for the projects in which they subsist.
2. There are projects that require management rights in order for them to operate in the way they were intended (e.g. strata title hotels, branded residences attached to hotels and some timeshare projects).
3. There are circumstances where long term contracts may be beneficial to bodies corporate (e.g. lift maintenance, painting programs, capital recoupment schemes for hot water or telecommunication services) and these circumstances are likely to increase with current environmental challenges. Therefore, any restrictions on management rights need to be carefully targeted.
4. There are management rights schemes that operate to the general satisfaction of all stakeholders and those stakeholders would not like them to be adversely impacted.
5. There are still problems in some management rights schemes that need to be addressed in the interests of all concerned.
6. There are options to management rights schemes (e.g. body corporate employees, off-site specialists) and legislative promotion of these options may be warranted. That may include use of town planning laws to incentivise developers to provide on-site management facilities as part of common property.
7. Existing building managers (and their financiers) have a substantial investment in their management rights and they are entitled to have that investment protected.

Government needs guidance on how to answer these questions. All stakeholders need to be involved in that guidance process. However, they all need to take a balanced and non-emotive approach to that process. The complexity of this question of management rights and other long term contracts is clearly captured in an excellent paper on Griffith University's web site, accessible at *www.strata-and-community-title-2011.ning.com*. Running parallel with that paper is a "blog" on this whole question of long term contracts and management rights. The objective of the blog is to seek the views of the widest possible cross-section of stakeholders. Take the time to read the paper and contribute to the blog. In this way you can do your bit to ensure that any further response by Government is more effective than past efforts. If you are not a "blogger", this is your big opportunity to get started.

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