

Guidelines for the engagement of a body corporate manager to carry out the functions of a committee and its executive members

Body Corporate and Community Management Act 1997
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Department of
Justice and Attorney-General

Section 1—Introduction

The relevant legislation requires this explanatory note to be given to members of a body corporate which is considering engaging a body corporate manager to carry out the functions of the committee and the executive members of the committee. It must accompany the material circulated for the relevant general meeting.

You should consider this information before voting on a motion *to engage a manager to perform the functions of the committee and its executive members*.

NB: This information does not apply to the engagement of a body corporate manager who is not being authorised to carry out the functions of the committee.

Section 2—Important information

Under what circumstances can a manager be engaged to perform the functions of a committee?

The legislation requires a body corporate to elect a committee. However, if certain requirements are met, the body corporate may engage a body corporate manager to carry out the functions of both the committee and the executive members of the committee. A manager can only be engaged in accordance with the Regulation Module applying to the scheme. For instance under the Standard Module, a manager may be engaged at an annual general meeting if:

- after the committee elections are held, there is a least one executive member position not filled or the total number of voting members is less than three; and
- there is a motion on the agenda of the meeting proposing the manager be engaged.

If the body corporate fails to fill the committee positions and does not engage a manager at the annual general meeting, the body corporate must call an *extraordinary* general meeting within one month of the AGM to consider filling the vacant committee positions. A motion to approve the engagement of a manager to carry out the functions of the committee and the executive members of the committee *must* be on the agenda of this extraordinary general meeting, so that the appointment of a manager can be considered in the event that the mandatory committee positions cannot be filled.

How is a manager engaged to perform this role?

The manager can only be engaged at a general meeting. The Standard Module provides that the motion must be decided by secret ballot and passed as a special resolution. The notice of the general meeting **must** include: the proposed terms of the engagement, a statement of the basis on which payment to the manager is to be worked out and this explanatory note. The motion to engage the manager must be the last item of business on the agenda for the general meeting.

What is the duration of the engagement?

An engagement expires after 12 months or at the completion of the next annual general meeting held after the engagement, whichever is the earlier period in time.

What committee functions will the manager carry out?

The manager may make any decisions that could have been made by the committee, and may carry out the functions of the chairperson, secretary and treasurer. For example, the manager may make decisions about the expenditure of body corporate monies, call a general meeting and prepare budgets. The manager will also be responsible for forwarding levy notices to owners, answering correspondence, and controlling the administrative and sinking funds of the body corporate.

Section 2—Important information continued

What restrictions apply?

The manager is subject to the same legislative restrictions as the committee. For example, the committee cannot fix or change a contribution to be levied by the body corporate; make decisions that change the rights, privileges and obligations of the lot owners; or make decisions the legislation reserves for the body corporate at a general meeting. The legislative limit for committee spending will also apply to the manager. More information concerning the committee spending limit is contained in the regulation module applying to the scheme.

Will there still be an elected committee when the manager is engaged?

When the manager is engaged the term of office of any existing committee members will end. While the manager is engaged, the body corporate cannot elect a person as a member of the committee.

What are the rights of owners when the manager is engaged?

The owners retain the right to be kept informed about the day-to-day administration of the body corporate and to make decisions as a body corporate at a general meeting. Lot owners can also request the manager to call an extraordinary general meeting in accordance with the regulation module applying to the scheme.

The manager must give each lot owner a written report every three months. The report must be given within 21 days after the end of each three month period. The report must address the following issues:

- Proposed repairs and maintenance to common property and body corporate assets to be carried out in the next three months.
- Any matters known to the manager about the condition of common property or body corporate assets.
- Any matters that the manager reasonably considers to be relevant to the future performance of the body corporate's duty to maintain common property and body corporate assets.
- The balance of the administrative fund and sinking fund and a reconciliation statement for each fund.
- Body corporate expenses incurred for the period of the report. The report must state the payee, amount of the expense, the date the expense was incurred and the reason for the expense.
- Decisions made by the manager.

The owners have the right to request one extra report every three months. The extra report must be provided by the manager if requested by at least one-half of the lot owners. This report must be provided within 21 days after the manager receives the request.

What can the owners do if not satisfied with the manager?

The relationship between the body corporate and the manager will usually be governed by the terms of a management agreement. However, the body corporate may, by ordinary resolution passed at a general meeting, terminate the manager's engagement. For example, the body corporate may terminate the engagement if the manager is convicted of an indictable offence involving fraud or dishonesty. The engagement may also be terminated if, after receiving a written '*remedial action notice*' from at least one-half of the lot owners, the manager fails to carry out the duties under the engagement or contravenes the code of conduct for body corporate managers and service contractors. Similarly, if the manager does not give a quarterly report to the owners, the body corporate may consider termination of the engagement. More information concerning termination is contained in the regulation module applying to the scheme.

Should the body corporate seek legal advice?

The engagement of the manager must be in writing and the body corporate will be entering into a written agreement (or contract) with the manager. Before the body corporate enters into a contract, owners should consider obtaining independent legal advice, as the terms of the agreement should protect the rights of the body corporate.

If the body corporate intends to terminate an engagement, the body corporate should also consider obtaining its own legal advice.