

Submission to Northern Queensland Insurance Inquiry.

Submitter: Ms Lesley Lorraine Powell



Co-owner: [Redacted]

Location: [Redacted] Queensland [Redacted]

Insurance: Strata

Insurer: [Redacted] (obtained for the Body Corporate through [Redacted]
[Redacted] an associated company to [Redacted] the Body Corporate Manager.)

Submission

PART ONE

I will first of all provide a case study of the events which took place at the Body Corporate Annual General Meeting held in May 2017 and subsequent to that meeting before making comments on the anti-competitive and illegal behaviour of the strata management industry.

Body Corporate AGM May, 2017

1. The agenda that went out to unit owners.

Motion 7.
ORDINARY RESOLUTION-Insurance
Submitted by the committee – Statutory Motion
That the following insurance be confirmed:-
Insurer: [Redacted]
Policy Number: [Redacted]
Due Date 31/7/2017
Sum Insured: Building: \$8,879,733
 Public liability: \$20,000,000
 Office bearers: \$2,000,000
Premium: \$35,063.13

Excess: \$22,500 named cyclone

Excess: \$500 All other claims

And that the Committee of the Body Corporate be authorised to obtain quotes and place insurance based on the best premium and terms available upon expiry of the current policy.

Notes

- This insurance was placed by the committee in 2016 subsequent to the AGM which gave them the authority to do so.
- The amount of commission payable to the broker has not been disclosed in the motion to the 2017 AGM
- This motion is in two parts which is not legal as two separate votes should be taken to distinguish between confirming the existing insurance which expires on 31st July 2017 and the taking out of new insurance from that date. The Body Corporate Commission has released an adjudicated decision in the Waves case in 2016 to this effect.
- The amount of money to be expended on insurance exceeds the limit for expenditure of the Body Corporate (\$22,500 as from 2015) and so therefore should be put to owners with two quotes and is not for the committee to decide. This matter has been clarified in the Northcliffe decision by the Queensland Body Corporate Commissioner in 2016 where it was clearly stated that items over the expenditure limit, in this case insurance, must be given to owners to decide with two quotes which declare commissions paid and terms and conditions.

2. Transcript of discussion re insurance

A recording was made of the AGM and the following are quotes from the Body Corporate Manager from [REDACTED] who has been the BCM for many years.

When the matter was raised about the motion not complying with legislation regarding expenditure and the findings in the Northcliffe case, the body corporate manager responds:

"I think Mr X (the chair) this has been raised in this Body Corporate forum before. I think it's been raised by another client but all I can say in answer to that is what [REDACTED] do is the way I believe that every strata management company I know of does every year in, year out.

Later. "I appreciate what you're saying. I haven't read the decision in depth. I'm sure the senior managers of [REDACTED] and other strata managers throughout the

industry are very aware of the decision. All I'm saying is our process has not changed and what we've offered you today has not changed and I don't know whether that decision has been appealed to a higher authority or its intended to.

Even later. "Look you know, I haven't done. I haven't discussed it with our competitors for a little while but the company is aware of this decision and it has been raised previously and it's gone to the top and it's probably been raised in other strata management companies throughout the state and we have not decided, we're not making any decisions to change the process.

Notes

- In the first quote the body corporate manager says this is the way it's always been done by [REDACTED] and all other strata managers. He does not acknowledge the Northcliffe decision at all. In the second quote there is a limited acknowledgement of the Northcliffe decision on his part and a suggestion that [REDACTED] and other strata management companies do know of it. In the third quote there is a clear acknowledgement of the Northcliffe decision on his part and of [REDACTED] and that they have decided to ignore it.
- [REDACTED] are deliberately flouting the legislation and the Northcliffe decision which makes it clear that when insurance exceeds the expenditure limit, it must go to owners with two quotes.

3. Minutes circulated to unit owners.

There was a lengthy discussion that took approximately half an hour of the AGM in which the owners present voted to confirm the insurance to 31st July, 2017.

There was discussion that the incoming committee look at all the issues surrounding the renewal of insurance including compliance with the legislation, both now and in the future. An EGM was suggested as a possible solution to the problem of owners voting on the insurance this year. It was agreed that the AGM could not resolve the matter of the insurance renewal.

Instead the minutes which were taken by the body corporate manager stated:

And that the Committee of the Body Corporate be authorised to obtain quotes and place insurance based on the best premium and terms available upon expiry of the current policy.

Note

- The AGM did not give the committee the authority to go ahead and place the insurance as per the original motion, part two.
- The body corporate manager has deliberately misrepresented the motion passed at the meeting

4. Insurance taken out by the Body Corporate Committee.

The committee took out insurance with [REDACTED] who were the insurers from the previous year. A quote obtained by an owner from [REDACTED] which was disclosed to the AGM and which was cheaper than [REDACTED] was ignored. Unit owners were not informed of the insurance and therefore of the terms and conditions or the commission paid to the agent for [REDACTED], an associated company of [REDACTED] who acted as the broker.

Note

- The committee and the Body Corporate Manager have deliberately ignored the legislation and the Northcliffe decision in going ahead and placing insurance without reference to the owners.
- If the quote obtained by another lot owner had been considered, there would have been a saving of several thousands of dollars to the body corporate in premium costs at the very least.

5. Records held at [REDACTED] for the body corporate.

The records held at [REDACTED] regarding the renewal of the insurance are incomplete. There is an e-mail from [REDACTED], an authorised representative of [REDACTED] purportedly attaching the following for the committee's consideration:

- Letter including quotations
- Relevant product disclosure statement(s)
- Claims history

Nowhere are there any such attachments in the record.

Only two committee members respond to an e-mail from the body corporate manager that they are happy with a renewal for 10 months to 31/5/2017.

An examination of the financial ledger records for the body corporate is necessary in order to ascertain the commissions paid for both the 2016 year and the 2017 year. These commissions are invisible to owners as the amount showing for insurance in the accounts is after accounting year end accrual adjustments. The amount paid to

_____ differs from the _____ account that was presented to owners with the AGM agenda. It is not possible to assess the commissions paid using the two pieces of information that were provided to owners. Without some accounting skills and access to the detailed information in the general ledger it would be impossible for a unit owner to know the commission paid. The disclosure of commission is required under S.177 of the Regulations (Standard Module) but has not been done by _____.

Notes

- There is either an attempt to obscure details regarding the renewal of the insurance on the part of the body corporate manager and/or _____ or sheer incompetence when it comes to the maintenance of proper body corporate records which require committee correspondence to be included. Perhaps both.
- There is an attempt to withhold from lot owners the amount of commission paid to the brokering company which is an associated company to _____.

6. Conciliation agreement from Queensland Body Corporate Commission.

A lot owner, unhappy about the process followed in obtaining the insurance lodged an application with the Queensland BC Commission regarding the matter of insurance and a number of other matters where the Body Corporate Committee failed in their duty to comply with the regulations.

The conciliation involved a representative from the BC Commissioners Office, the applicant and two members of the Body Corporate Committee.

Regarding the insurance matter, body corporate representatives, neither of whom were present at the AGM said they had relied on the inaccurate minutes in arranging insurance. That is, they said the AGM gave the committee authority to place insurance. Given that two other members of the committee were present at the AGM and would have been aware of what actually happened it is difficult to believe this is an accurate representation of the facts.

The body corporate representatives further said that there was only one quote received from the _____ agent representatives and that the _____ could not get another insurer that was prepared to quote. At the AGM a lot owner had produced a quote from _____ a major broker which he had obtained himself and potentially this quote was still "live" so that _____ may have only been able to get one quote. That there was another quote in existence, however, negates the argument that no other insurer was prepared to quote.

When asked if they had read the insurance policy, both representatives replied in the affirmative. However, when questioned on the \$1.3 million plus rent cover which is not applicable to the this body corporate situation(units are primarily holiday lets rather than permanent residents or tenants and the rent cover applies only to permanent occupants) and which must make up a large proportion of the insurance cost, there was a resounding silence. Clearly, at least these two committee members had not read the insurance document either before it was agreed to or subsequently.

The conciliation agreement required the Body Corporate to hold an EGM before the end of February 2018 to regularise the insurance which was acknowledged to have been illegally placed.

Notes

- The Body Corporate Committee did not place insurance appropriate to the this particular body corporate situation.
- This is a Body Corporate Committee which is prepared to knowingly break the law.
- The Body Corporate Manager is not providing proper advice so that the placing insurance falls within the legislation governing Bodies Corporate. Rather, the opposite.

7. The EGM held in February 2018.

As well as dealing with the issues regarding insurance and other items of committee over-expenditure as was required by the conciliation agreement, the committee put forward a motion to raise the committee's spending limit to \$45,000. This would have meant that insurance could be dealt with by the body corporate manager and the committee without reference to owners. This motion was lost. Two owners spoke up against the motion to confirm the minutes of the AGM relating to the AGM giving the committee authority to take out the insurance. This motion was withdrawn and will now be put to the 2018 AGM.

Notes

- Prior to the meeting a lot owner sent out background information relating to the insurance and the actions of the committee. With this information, lot owners were able to act with some factual knowledge rather than in a vacuum.

PART TWO

The above case study reveals a number of disturbing elements, not least of which is the willingness of the Body Corporate Committee to act knowingly outside the legislation and not in the interests of owners.

However, what are more disturbing in the context of this submission are the actions of the Body Corporate Manager representing [REDACTED]

- Allowing a motion to go before the AGM authorising the committee to place insurance which he knew to be illegal.
- Not being truthful in his initial responses about his and [REDACTED] knowledge of the Northcliffe decision
- Misrepresenting the motion that was passed at the meeting in the minutes
- Facilitating the placement of insurance for the 2017/2018 year by the committee when he knew this to be illegal
- Failing to ensure there was proper documentation in the Body Corporate records regarding the insurance. (Of course the blame for this could be placed onto the Body Corporate Committee Secretary.)

This is only one Body Corporate managed by [REDACTED]. Is it drawing too much of a long bow to reach the conclusion that other Bodies Corporate managed by [REDACTED] are not complying with the legislation? That is, committees are being authorised to place insurance where the quotes or perhaps only one quote provided by an associated company, [REDACTED] is considered. This means that lot owners in bodies corporate are not having access to other independent brokers who may charge a lower commission or provide more services when it comes to processing claims. Thus, the decisions made illegally by committees under the guidance of body corporate managers potentially end up costing the owners in higher insurance premiums and commissions and possibly contain components which are not appropriate to their scheme.

It may be drawing an even longer bow to draw the conclusion that this case study involving [REDACTED] is not an isolated one and that this practice is widespread amongst other Queensland Body Corporate managers? Many have associated brokers or insurance companies with which they wish their body corporate clients to use in order to obtain bloated commissions. Therefore there is a limited range of options placed before bodies corporate.

Body Corporate Managers in Queensland on the basis of this case study are using anti-competitive and unethical behaviour in the placement of strata insurance. It is not illegal in the sense that major expenditure only requires two quotes but the range of possibilities being offered may be much less if the only broker used is from an associated company where the chief aim is to keep the commission "in house." It is illegal when motions put

before AGMs give committees the right to place insurance rather than the unit owners when major expenditure limits are exceeded.

There is no robust competition occurring here. Guided by Body Corporate Managers lacking in integrity and operating under their own firm's agenda, ill-informed, naive or compliant committees are not making decisions in the best interests of lot owners. Where the insurance premiums are a matter of major expenditure it is the owners who should be making these decisions, not the committees.

The strata management industry in Queensland lacks **regulatory oversight**. There is neither a professional body to which licensed body corporate managers must belong, nor are there any professional standards against which body corporate managers can be held properly accountable. If this Commission seriously wants to increase the competition available to consumers which will lead to a reduction in the premiums, then it must take action against strata managers who act in the best interests of their companies at the expense of the consumers. Leaving issues of compliance to lot owners to report to the Body Corporate Commission will have a limited or no effect where strata managers are acting in their own interests and flouting the regulations. The Body Corporate Commission has no power to fine or to suspend or revoke licenses to practice in strata management. Wet bus tickets have historically proven ineffective when there is the bigger end prize of a healthy profit.

Regulation of the strata management area must be accompanied by an **education campaign** directed at strata lot owners. Lot owners must be made aware of the structure of the insurance industry operating in the strata field and of companies offering insurance in northern Australia. They can then instruct their committees or Body Corporate Managers to obtain quotes from independent sources in order to get genuinely competitive pricing, not just for premiums but for other costs which are not immediately obvious, such as processing of complex or lengthy claims. There is a Latin motto "Scientia Potestas Est," or Knowledge is Power. It is in the interests of unethical Body Corporate Managers to keep unit owners and committees in the dark regarding insurance. Armed with knowledge, people can make positive change happen. Without knowledge, power will continue to reside with the strata management industry and there will be no competition.

Lesley Powell

8th December 2017.