



Newsletter – October 2015

The risks in painting and refurbishment contracts

MHL is regularly retained to review contracts for the painting of a building or window/balcony replacement works. These are important maintenance and property improvement works for all bodies corporate, but we are often surprised by some of the inappropriate or adverse clauses in the contracts supplied by the service providers, which usually reflects that their contracts are not tailored for a body corporate client.

Given that these contracts regularly involve amounts of up to half a million dollars, we strongly recommend that all committees proactively protect themselves and their owners by having the draft contracts fully checked from a legal perspective. Once signed, these contracts could be the only thing between the body corporate and a large liability claim or risk.

A few examples of issues we commonly see include:

1. Unfair or unequal indemnities: for example, a broad indemnity in favour of the contractor which does not protect the body corporate's best interests and may expose them to liabilities beyond their reasonable control and which exceed insurance cover or authorisation. These immediately threaten insurance coverage which could leave a body corporate completely exposed.
2. Access issues: agreeing to provide access through private property with no notice – this is in breach of s.163 of the Body Corporate and Community Management Act; and
3. Unfair liability clauses: for example, agreeing to be liable for any damage caused to the project contractor by anyone – can you really control all your occupiers and their invitees throughout the project?

The simple but critical message is that a prudent committee must get legal advice before signing a painting or refurbishment contract. Failing to do so exposes the body corporate to potentially huge risks given the nature of the works being conducted on site.

MHL update

As of October 2015, and just after our 5th birthday, the MHL team has grown to 5 lawyers who practice exclusively in body corporate law. We know this area and we know it well.

Thanks to the many bodies corporate who have helped grow this firm. We look forward to the ongoing journey together!

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About us

Peter Hunt commenced practice with Mathews Hunt Legal in July 2010 after 20 years in the law, including being a partner in charge of litigation at another firm. He is a regular presenter of seminars to Body Corporate Managers and the Strata community.

MHL practices almost exclusively in the Strata Industry and we have seen every imaginable issue (and some unimaginable), so don't hesitate to give us a call if you require legal assistance.

Disclaimer: This article is a summary of the subject matter only and is not legal advice, nor should it be relied upon as legal advice. Legal advice, specific to the individual circumstances of each case, should be sought at all times. All reasonable endeavours are made to ensure that this article is accurate at the time we send it to you, but no responsibility is accepted for any errors or for changes to the law.

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