

BODY CORPORATE NEWSLETTER

RECENT UPDATE – NEW STANDARD FOR ASSESSMENT OF BODY CORPORATE RECOVERY FEES

Holman Webb Lawyers recently obtained an important decision in the Federal Court which has implications for the body corporate industry with respect to the recovery of unpaid levies.

We are now able to ensure that a body corporate is eligible to recover a significantly higher percentage of fees incurred in Federal Court proceedings for unpaid levies.

The Previous Legal Precedent

Generally, legal costs incurred in recovering unpaid body corporate levies are assessed pursuant to the relevant *Body Corporate Regulation*, specifically, that any costs “of a reasonable amount and reasonably incurred” in recovering unpaid levies are payable by the lot owner. Such an assessment sits somewhere between party and party costs (which has been described as where generally 50-60% of the costs incurred are assessed as recoverable) and indemnity costs (which has been described as where generally 90-100% of the costs incurred are assessed as recoverable).

This means that generally the assessed costs of a body corporate in recovering unpaid levies will be around 60-90% of the costs incurred.

The *Federal Court Rules* provides specific directions on how costs incurred in Federal Court proceedings should be assessed, stating they should be assessed on the party and party basis - where generally 50-60% of the costs incurred are assessed as recoverable.

This has meant that bodies corporate are often wary of commencing Federal Court bankruptcy proceedings for unpaid levies as they may ultimately receive a much lower assessment of their costs than if they had, for example, proceeded in the Magistrates or District Court.

Recent Court Decision

The Federal Court agreed with the arguments that the costs of Federal Court proceedings for unpaid levies should not be assessed in accordance with the *Federal Court Rules*, but should instead be assessed in accordance with the relevant *Body Corporate Regulation*.

The Federal Court stated that body corporate recovery costs for Federal Court proceedings are to be assessed in accordance with the wording of the *Body Corporate Regulation* rather than the wording of the *Federal Court Rules*, i.e. “all costs reasonably incurred and of a reasonable amount”.

This means that the body corporate in that case is now entitled to recover a higher percentage of its costs in the Federal Court proceedings against the lot owner than it would have been entitled to otherwise.

Conclusion

This decision has important implications for bodies corporate, both in Queensland and nationally, given that the Federal Court is a Commonwealth Court.

***Sam Marsh** is an Associate of Holman Webb Lawyers Brisbane, and his practice includes all aspects of strata legislation including body corporate levies recovery, insolvency, directors duties, and commercial litigation and dispute resolution.*

***Shane Roberts** is a Partner at Holman Webb Lawyers, with over 30 years' experience in civil litigation, dispute resolution, insolvency, and body corporate and strata law.*

If you wish to discuss this case in more detail, or for legal advice or assistance with any strata or body corporate matters, contact Sam or Shane using the contact details below.

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