

# Common Property

Newsletter for professionals in the facilities management sector.



## The Burdens of Power



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Leverage had cause towards the end of last year to advise an executive committee in relation to proceedings in the High Court. What became an issue was the personal view points of the executive committee as it relates to their own affairs. The vote which they wished to take as an executive committee was on the basis of self interest and not on the basis of the Owners Corporation interests.

As a lot owner, the owner is permitted to vote in their self interest. A lot owner has a vote at the Owners Corporation in relation to all affairs that affect themselves. They have no burden to vote in the best interests of the Owners Corporation.

This is different when it comes from the executive committee members. The executive committee owe a duty of care to the Owners Corporation. They also have a fiduciary duty to act in the best interests of all lot owners. This means that, executive committee members have a fundamental duty to always vote for what is in the best interest of the Owners Corporation. This may mean that members of the executive committee vote in a way which does not benefit themselves.

Organisations who own a number of lots often use their voting power to elect themselves or nominated persons onto the executive committee. This is quite permissible, when voting as a lot owner. It might serve to benefit the multiple lot owners to have control of the executive committee, but those executive committee members are bound to vote in a way that benefits the whole, not the individual lot owner.

If an executive committee votes in a way which is not in the best interest of their Owners Corporation, that executive committee may be sued for breach of fiduciary duties. It will happen! We have already had approaches from a particular Owners Corporation that has asked whether we would consider taking on a case to sue an executive committee who have used their positions

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as lot owners to have themselves elected on the executive committee and made decisions which are in their self interests. In some cases, their decisions have been unlawful.

This is what the burden of power is about. It is nice to have control, but the reverse side is that it also becomes a responsibility. The responsibility becomes liability if those responsibilities are not fulfilled in the best interest of the person they are meant to protect.

Coming Up Next: Work, Health and Safety Laws

We have had a considerable amount of interesting documents being produced for the Work Health and Safety Act 2011 which is to replace the Occupational Health and Safety Act 2001 in NSW. This is too large to be done in a single newsletter. Hence, from next week we will run a series of newsletters over the next 4 weeks of discussions about the Work, Health and Safety Regulation.

**Cheers,  
Bailey Compton  
and The team at ACP/Leverage!**



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