

## ***OCTOBER NEWS***

What happens if requirements for a strata AGM are not met - is the AGM invalid?



### ***Supreme Court Saves Defective AGM's***

The strata legislation contains a number of requirements which must be met for any AGM's. These include requirements for the AGM agenda to contain certain motions and for the AGM notice to be accompanied by various documents. What happens if these requirements are not met? Is the AGM invalid

A recent decision of the Supreme Court provides helpful guidance on this issue. Introduction The case of Sher Global Enterprises Pty Ltd -v- Owners – Strata Plan 31758

[2018] NSWSC1057 involved a claim by an owners corporation against a lot owner for unpaid strata levies that were raised at several AGM's. The lot owner disputed that the levies had been validly struck. This is because the owner claimed that various requirements in the strata legislation concerning the AGM's were not met.

The Supreme Court had to decide whether or not the AGM's were valid even though some of the requirements of the strata legislation concerning the AGM's were not met.

#### Requirement number 1: Service of Meeting Notice

- The strata legislation requires the notice of an AGM to be served on every lot owner.
- The legislation also requires lot owners to provide the owners corporation with their address for service of notices

However, what happens if an owner provides an incorrect address for service of notices? Does the owners corporation still have to serve AGM notices to the incorrect address?

This is what happened in the Sher case. The lot owner provided the owners corporation with an address for service of notices which was an empty office space. The Supreme Court held that the owners corporation did not have to serve notice of its AGM's on the lot owner to the empty office space as that would have been meaningless. In this case, the owners corporation sent notices of the AGM's to the address of the lot owner's solicitor which the Court said was good enough.

Importantly, the Court also concluded that there was no statutory requirement for an owners corporation to track down a correct address for service of notices of an owner. For these reasons the Court decided that it did not matter that notice of the AGM's was not sent to the owner's current address and that the AGM's were not invalid for that reason.

#### Requirement number 2: Service of Previous Meeting Minutes

- The strata legislation previously required the notice of a general meeting to be accompanied by a copy of the minutes of the last such meeting.

In this case, the owners corporation did not include the minutes of the last general meeting in the notice of each AGM. Sher argued that this meant that the owners corporation did not comply with the requirements in the strata legislation concerning the AGM notices and that

therefore the AGM's were invalid. The Court disagreed. The Court concluded that the requirement to send the minutes of the last general meeting together with the notice of an AGM was procedural only and the failure to comply with that requirement would not render an AGM invalid. *JS Mueller & Co 02 9562 1266 | enquiries@muellers.com.au | www.muellers.com.au*

Importantly, the Court also concluded that there was no statutory requirement for an owners corporation to track down a correct address for service of notices of an owner. For these reasons the Court decided that it did not matter that notice of the AGM's was not sent to the owner's current address and that the AGM's were not invalid for that reason.

### Requirement number 3: Mandatory Motions

- The strata legislation also requires the agenda of an AGM to contain certain motions
  1. Motions to adopt financial statements
  2. Confirm the insurance policies held by the owners corporation
  3. To restrict the powers of the strata committee
  4. To prepare or review a 10-year capital works fund plan
  5. To consider the appointment of an auditor and the election of a strata committee

None of these motions were included in the AGM agendas issued by the owners corporation. The Court concluded that the inclusion of these motions was procedural and not mandatory as a result of which the failure to include those motions in the agendas of the AGM's did not make the AGM's invalid.

### Requirement number 4: – Financial Statements

- The strata legislation also requires the notice of an AGM to include certain financial statements

In this case, the owners corporation did not include those financial statements in the notice of its AGM. The Court said this did not matter. The Court concluded that whilst the owners corporation should have included the financial statements in the notices for its AGM's the omission of those statements did not invalidate the AGM's.

The Wash-Up The Court reached the conclusions that it did because it recognized that if

an AGM was invalidated because certain motions were missing from the agenda or documents were not attached to the AGM notice, this would cause substantial administrative inconvenience for the owners corporation and would not further the objects of the strata legislation which are to provide for the orderly management of strata schemes.

## **Conclusion**

As a result of its conclusions, the Court found that Sher was liable to pay the levies that had been raised at the AGM's. The decision in the Sher case is a victory for common sense.

It means that not every single requirement of the strata legislation must be met in order for an AGM to be valid and provides owners corporations with some degree of flexibility in the event that they make mistakes in relation to their AGM's.

However, there are still some mandatory requirements in the legislation which must be met in order for an AGM to be valid. This means it is still important to ensure that the requirements in the legislation concerning AGM's and other general meetings are met so that owners are not given an opportunity to dispute the validity of meetings and the decisions made at them.

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## **Upcoming Events**

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**13-14 OCTOBER 2018**  
**WILLOWVALE RD. GERRINGONG**

## **A DAY ON THE HILL: FESTIVAL CROOKED RIVER WINES**

Join them for a day of amazing live tunes, local wine, craft beer, tasty eats and fun.

Ticket includes entry to the festival and limited wine tasting. Smoked Pulled Pork Burger, Beef Rendang Curry, Falafel Salad, Crooked River and Robertson Jacke Potatoes, Cheeseboards, Scrolls, Oyster Bar, Pizza Truck, Coffee Cart

Christie Lamb

Australia's Golden Girl of Country Rock

Owen Campbell

Australia's Premier Blues/Roots Artist

Chart Topping and undoubtedly one of Australia's most exciting performers

The Missing Linc Band, Andre Corban Drums, Dave Quinn Bass, Lincoln Piper Guitar/Vox.

Peter Northcote

Undoubtedly Australia's Premier Session Guitarists, A Philanthropist and all round nice guy. Peters playing gives you goose bumps. He's played with some of the biggest international stars and now graces you with his presence.

Scott McRae

Easy Beats/Stevie Wright Show  
Television Presenter/Actor and one hell of a voice

Alan Barnes - Don't be fooled by the shadow of his brother Jimmy. Alan can hold his own!

Ned Olive and Jack Purdon Bass

Andrea Krakovska - Toxic Dolls, Keys/Guitar

For more information:

P: 0242340975

[events@crookedriverwines.com](mailto:events@crookedriverwines.com)

<https://events.humanitix.com.au/crwspringfestival>



## **TERARA PUBLIC SCHOOL: COUNTRY FAIR**

Terara Public School is holding their country fair on their heritage school grounds. The Country Fair is held every three years and consist of a day full of fun not only for the kids but the adults too!

On the day you will see the school choir performing, local buskers, Rural Fire Bridge

and their truck, an art gallery which includes artworks for sale by the students. There is going to be approximately 40 stall holders with many eatery options including high tea, cheese and cracker platters, pull pork rolls, barbecue supported by the Lions Club.

For more information:

Address: Millbank Road Terara Public School, Terara, NSW 2540

Phone: 0421 327 015

Email Address: [kzapril82@gmail.com](mailto:kzapril82@gmail.com)

Facebook: <https://www.facebook.com/Terara-Country-Fair-722441944544435/>

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## Audit Report



**2018 AUDITOR'S REPORT**

for AUDIT OF TRUST ACCOUNTS  
Property, Stock and Business Agents Act 2002- section 111

\*\* This AUDITOR'S REPORT is only required to be lodged with Fair Trading if it is qualified by the auditor

**AUDITOR'S DECLARATION**

Dated: this  day of  20

Auditor's Full Name :  
[print in full]

Auditor's Firm:  
[if applicable]

\*Company Auditor's  
Registration Number:  
[if applicable]

Auditor's Postal Address:

Auditor's Phone No.:

1. Neither I or my firm are disqualified from undertaking this audit pursuant to section 115 of the Act.
2. Pursuant to section 111, I have completed this report in respect of the following Licensee Entity (i.e. corporation or sole trader) that held trust moneys and carried on business, or held trust moneys and was inactive, during the period:

Licensee Entity Name(s):

Licence No.:

For audit year  to  Due by 30/09/2018

3. The Trust Records referred to in this report relate to Trust Accounts (General and Separate), as listed under Schedule 1A and 1B, conducted under the Licensee Entity Name(s) as named above, being in relation to trust moneys received or held during the above audit period

4. I was provided with the Trust Records of the Licensee Entity for whom this report is prepared, on: 14 / 08 / 2018

5. In carrying out the audit, I have made test examinations of the transactions recorded in the Trust Accounts (general and clients) in accordance with generally accepted auditing standards and practice.

6. In accordance with Table A, this AUDITOR'S REPORT has identified breaches that are in contravention of the legislation.

YES  NO  If Yes, those breaches are listed on Schedule 2

7. In my opinion, subject to the qualifications as reported on Schedule 2, for the period covered by the report, having regard to the legislation applicable at the time that the money was held in the Trust Accounts, based on appropriate examinations and sampling techniques:-

- a. the books of account required to be kept under Sections 103 and 104 of the *Property, Stock and Business Agents Act 2002* have been kept in accordance with the Act and its associated Regulation,
- b. during the period of reconciled balance(s) of the trust account(s) were sufficient to meet all trust creditors of the licensee entity as disclosed by the books of accounts and records.

Licensee was able to provide all documents requested.

All breaches listed under **Schedule 2** were discussed with Licensee in Charge.

Signature of Reporting Auditor

*B. Ambroski*

# Trades & Services Directory

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3. *Hot Water installation and repairs,*
4. *Blocked drains, CCTV drain camera inspection,*
5. *Waterproofing.*

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# STRATA INSURANCE

CRM Brokers' Strata division engages specialist strata brokers whose main function is to deal solely with all things strata. Our in-house Claims team ensures we provide accurate assessments when discussing claims and potential issues with insurers.

We are mindful of the fact that the Owners Corporations' premium is one of the major expenses for strata, however, this should not be isolated as a sole factor when considering the placement of cover with an insurer. The importance of having claims paid when most needed; i.e. the speed at which a claim is assessed and approved; the policy wording to accompany a claim, are additional factors that must be taken into account during the broking process.

## Welcome to All Trade Services Illawarra

All Trades Services Illawarra provides a maintenance management service for strata management and real estate agents from Helensburgh in the north to Ulladulla down south. All Trades Services Illawarra work with you and your clients to provide the best service, tradesmen and quality of work assuring you and your clients have a hassle-free experience while we maintain your properties.



All Trades Services Illawarra will work with your tradesmen you have on file or we also have our own tradesmen we use if needed. The benefit in using All Trades Services Illawarra is you and your staff only need to contact one tradesmen for all maintenance issues, quotes and reports while we deal with all trades to ensure the job is completed to the highest of standards. All Trades Services Illawarra is on call 24/7 for all emergencies and after hour services needed.

## ALL TRADES ILLAWARRA

For more information:

Contact: 0431 147 746

Website: [www.alltradesillawarra.com.au](http://www.alltradesillawarra.com.au)

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**WOLLONGONG**

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