



**AGENTS LICENSING BOARD OF THE NORTHERN  
TERRITORY**

**REASONS FOR DECISIONS: INQUIRY CONCERNING  
DISCIPLINARY ACTION: NT PROPERTY MANAGEMENT  
PTY LTD (TRADING AS ACE BODY CORPORATE  
MANAGEMENT (DARWIN)) AND AATHI YUHAN  
SELVANAYAGAM**

**Applicant:** Evelyn Ocampo

**Respondents:** NT Property Management Pty Ltd (Trading as Ace Property Management (Darwin))  
Aathi Yuhan Selvanayagam

**Date and time of hearing:** Monday 1 December 2025 at 10.00am

**Venue:** Gurrumbuy Room  
Level 6, NT House  
22 Mitchell Street, Darwin

**Reason for Inquiry:** To hold an inquiry pursuant to section 68(4) of the *Agents Licensing Act 1979* to determine if there are grounds for disciplinary action to be taken against NT Property Management Pty Ltd (trading as Ace Body Corporate Management (Darwin)) and Aathi Yuhan Selvanayagam

**Agents Licensing Board:** Robert Bradshaw, Chairperson  
Kerri-Anne Laurence, Real Estate Board Member  
Carol Need, Real Estate Board Member  
Jake Quinlivan, Board Member

**Representation:** Brett Heath, Carter Newell, Counsel representing NT Property Management Pty Ltd (Trading as Ace Property Management (Darwin)) and Aathi Yuhan Selvanayagam  
Kevin Kadirgamar, Department of Trade, Business and Asian Relations, Counsel Assisting the Board

**In attendance:** Aathi Yuhan Selvanayagam, respondent  
Laine Cornish, Senior Board Support Officer, Department of Trade, Business and Asian Relations

**Non-attendance:** Evelyn Ocampo, applicant

## **Introduction**

1. On 26 February 2024, Evelyn Ocampo (“the applicant”) applied to the Agents Licensing Board (“the Board”) for disciplinary action under section 68(3) of the *Agents Licensing Act 1979* (“the AL Act”) in relation to Aathi Yuhan Selvanayagam (“the business manager”) and NT Property Management Pty Ltd (“the agent”) (collectively “the respondents”). On 28 February 2024, the applicant lodged an updated application for disciplinary action.
2. In broad terms, the Board conducted an inquiry into the applicant’s contentions that the respondents failed to properly conduct themselves in their capacity as body corporate manager of a unit plan and provide accurate advice and guidance to the committee concerning matters such as the calling of an annual general meeting, the conduct of an annual general meeting, the suspension of members of the committee, and the respondents’ knowledge of legislative requirements. The specific complaints are outlined in the application section below (paragraph 9).
3. The agent holds a company real estate and business agent licence valid to 19 June 2028, trading under the business name ‘Ace Body Corporate Management Darwin’. It is a registered company with the Australian Securities and Investments Commission. The registered business name ‘Ace Body Corporate Management (Darwin)’ is held by the agent.
4. The business manager holds an individual estate and business agent licence valid to 8 September 2028. He is employed by the agent but is also understood to be the owner of the agent. The business manager has been a licensed agent since 2019. He took over the business of the agent in October 2019.
5. The respondents’ business focusses on unit title management.
6. The applicant is the owner of a unit that is part of a unit plan (the unit plan) managed by the agent.
7. The Board is inquiring into whether there are grounds to take disciplinary action against the respondents.
8. On 1 December 2025 the Board conducted a hearing in respect of the issues raised by the applicant. In conducting the hearing the following materials and evidence were considered by the Board:

- (1) An inquiry book prepared by the Department of Trade, Business and Asian Relations (“the department”). This inquiry book contains 57 documents that included the complaint, licensing information, various legal opinions, emails between the applicant, the respondents and the department and submissions from the respondents’ lawyers. References in these written reasons to “document” are references to documents contained in the inquiry book;
- (2) Testimony from John McClaren, Peter Grice and the business manager.

### **Details of the application**

9. The application contained the following particular complaints:

- ***Complaint 1 – administration under the wrong legislation***

The respondents administered the unit plan as though the *Unit Titles Schemes Act 2009* and its associated modules applied, rather than under the *Unit Titles Act 1975* and the *Unit Titles (Management Modules) Regulations 2009* which govern a standard plan. This error in the governing framework resulted in repeated procedural irregularities and confusion for proprietors.

- ***Complaint 2 – refusal to accept termination***

The respondents refused to accept termination following the resolution of the body corporate’s to terminate management and engage a new body corporate manager. In doing so, the respondents provided incorrect advice on the requirements for terminating the manager.

***Complaint 3 – refusal to handover documentation***

The respondents failed to handover records and restricted access to corporation’s online portal following attempted termination.

***Complaint 4 – calling of 2 February 2024 Annual General Meeting***

The respondents provided incorrect and inconsistent advice with respect to the convening of the Annual General Meeting.

***Complaint 5 – conduct of 2 February 2024 annual general meeting***

The respondents failed to properly conduct the annual general meeting with respect to chairing of the meeting and calculation of quorum.

***Complaint 6 – suspension of chairperson at committee meeting***

The respondents provided incorrect advice to the committee with respect to suspending committee members at the meeting held on 28 February 2024.

### **Investigation of the complaint**

10. On 29 February 2024, the department provided the updated application form (lodged 28 February 2024) to the respondents for response by 14 March 2024 (**Document 40**). The department did not provide the supporting material that had been provided by the applicant.
11. On 5 March 2024, the respondent contacted the department to raise matters, including seeking a copy of the supporting materials (**Document 40**).
12. On 12 March 2024, department provided the respondent a copy of the “chronology of events” that had been submitted by the applicant (**Document 42**).
13. Following a departmental request of 8 August 2024 for further clarification, the respondents supplied additional material on 22 August 2024, including proxy forms, an owner list, further correspondence and a statutory declaration (**Document 75**).

### **Decision to hold an inquiry**

14. At its meeting held on 17 September 2025, the Board determined the following as the grounds for inquiry arising out of the complaints outlined above:
  - Ground 1 - The respondents managed the unit plan under the wrong legislation
  - Ground 2 - The respondents failed to properly advise the committee of the procedural defects of the committee meeting held on 10 December 2023 and the committee’s resolution to change property manager
  - Ground 3 - The respondents failed to provide the applicant and the committee with a proper response to their notice of termination and request for documentation
  - Ground 4 - The respondents failed to provide clear, accurate and consistent advice with respect to the calling of the general meeting on 2 February 2024
  - Ground 5 - The respondents failed to properly guide the corporation in the conduct of the general meeting held on 2 February 2024, particularly with respect to the position of chairperson and the calculation of quorum
  - Ground 6 - The respondents failed to properly guide and advise the committee with respect to the purported suspension of members at the committee meeting held on 28 February 2024.

15. On 21 October 2025 the department provided the notice of the inquiry to the parties.

**Provision of draft inquiry book**

16. On 28 October 2025, the respondents and the applicant were provided with the draft inquiry book containing notice of matters to be inquired into, and asked them to make submissions by close of business 11 November 2025.

***Submissions by respondents***

17. On 4 November 2025, the department received correspondence from Mr Brett Heath (from a legal firm, Carter Newell) representing the respondents.

18. On 11 November 2025, the department received submissions from the respondent.

19. The submissions and associated correspondence with the department are included in Documents 89 - 104.

***Submissions by applicant***

20. On 12 November 2025 the applicant provided a submission to the department (document 86).

**Chronology of Events**

21. Based on the written materials and evidence provided at the hearing the following table contains a chronology of relevant events and correspondence in relation to the application for disciplinary action:

<b>Date</b>	<b>Summary of correspondence / action</b>	<b>Document no</b>
10 December 2023	A committee meeting of the Unit Plan was held. At that the time there were only 3 members of the committee	<b>Document 10</b>
14 December 2023	All 3 committee members exchanged emails indicating a resolution to terminate the engagement of NT Property Management and to appoint another body corporate manager	<b>Document 9</b>
15 December 2023	The applicant emailed the minutes of the committee meeting (held 10 December 2023) to NT Property Management for distribution to owners. The minutes did not record any resolution to terminate the engagement of the manager.	<b>Document 50</b>

18 December 2023	Manager circulated minutes of the 10 December 2023 meeting to owners.	<b>Document 10</b>
4 January 2024	The chairperson (the applicant) issued 30 days' written notice to NT Property Management purporting to terminate its services. The notice requested handover of all records to the proposed new manager by 5 February 2024.	<b>Document 11</b>
8 January 2024	NT Property Management responded by email, stating that the appointment of a manager must be decided at a general meeting of the body corporate.	<b>Document 11</b>
9 January 2024	The applicant responded to NT Property Management stating: <i>I have read the Act and subject to Section 51 of the Unit Titles Act, Management Modules 2009, the Committee is entitled to engage with a manager without a General Meeting being held.</i>	<b>Document 13</b>
10 January 2024	NT Property Management replied to the applicant and stated: <i>All along the appointment of the manager has been under the Unit Titles Schemes Act 2009 with a plan number of UP 2010/003 . From 2011, the appointment of the manager has been based on the Unit Titles Schemes Act and this has been rolled over ever since. As such the appointment has got to be decided at a general meeting. Due to the notice period required I have booked the 6th of Feb 2024.</i>	<b>Document 13</b>
11 January 2024	NT Property Management issued notice of a general meeting to be held on 2 February 2024. The respondent advised:  <i>"A collective of owners (who hold more than 25% of the total interest entitlements), have stated they oppose the decisions stated of the committee meeting minutes sent via email on the 18th December 2023.</i>  <i>They have called a General Meeting for the body corporate to be held on the Friday 2nd February 2024 at 5pm."</i>  On the same date, the applicant sought clarification from the department regarding the legislation applying to Unit Plan 2010/003.	<b>Document 14</b>  <b>Document 13</b>
12 January 2024	Departmental officers (the Scheme Supervisor and a departmental compliance officer) confirmed by email to the applicant that Unit Plan is regulated under the <i>Unit Titles Act 1975</i> and the <i>Unit Titles (Management Modules) Regulations 2009</i> (standard plan).  The same day, the applicant emailed the respondent to advise that the committee had not previously been made aware of any issues	<b>Document 13</b>  <b>Document 14</b>



	<p><i>1975, not Unit Title Schemes Act 2009</i></p> <ul style="list-style-type: none"> <li>○ the process for removal of member for breach of code of conduct, as set out under <i>the Unit Titles (Management Modules) Regulations 2009</i></li> <li>○ the dispute of the 10 December 2023 committee meeting minutes was invalid as it was outside the 7-day legislative timeframe.</li> <li>● advising<sup>1</sup>: <ul style="list-style-type: none"> <li>○ that the meeting type called (Annual General Meeting) was incorrect and the meeting could only be a “special general meeting” or “extraordinary general meeting”</li> <li>○ that the respondent must email members to advise them of the change in meeting type (to be a meeting that solely deals with grievances)</li> <li>○ the meeting must only address matters in members’ request; attach full request to notice; ensure transparency.</li> <li>○ the respondent should consider a third party to chair the relevant meeting</li> </ul> </li> <li>● instructing the applicant to provide emails showing committee agreement for contract termination and reasons; before termination, allow management company chance to rectify issues and formalise expectations</li> </ul>	
16 January 2024	<p>The applicant forwarded to NT Property Management the committee’s 14 December 2023 email resolution to terminate its engagement.</p> <p>The same day, the respondent wrote to the departmental officer advising:</p> <p><i>I would like to clarify that the meeting has been convened under clause 29(c), not clause 29(d), and the meeting papers adhere to the stipulations outlined in clause 30 of the regulations for an Annual General Meeting).</i></p> <p><i>It appears from your email that there may be a misunderstanding regarding the meeting being called under clause 29(d), leading to an incorrect inference. I wanted to assure you that the meeting has been organized under the</i></p>	<p><b>Document 16</b></p> <p><b>Document 15</b></p>

<sup>1</sup> Arguably incorrectly in some respects

	<p><i>appropriate clause to align with the legal requirements.</i></p> <p>The departmental officer responded to the respondent:</p> <ul style="list-style-type: none"> <li>• noting that the statement that the meeting was called under cl. 29(c) not (d) appeared to be in contrast with the respondent's email on 11 January 2024</li> <li>• enquiring about whether the members who constituted 25% were eligible to do so (e.g. had no outstanding fees)</li> <li>• re-confirming (incorrectly) that the issue was the meeting being termed an Annual General Meeting instead of a meeting to deal solely with grievances</li> <li>• re-confirming that the applicable Act was the <i>Unit Titles Act 1975</i> (and seeking confirmation that the body corporate was being managed under that legislation)</li> <li>• noting they were still awaiting a signed copy of the management agreement for NTPM sought previously.</li> </ul>	<p><b>Document 15</b></p>
17 January 2024	<p>The respondent responded to the departmental officer, providing copies of documentation relating to the appointment of NT Property Management.</p> <p>The same day, the respondent responded to the applicant and the committee, in the same terms as his email to the departmental on 16 January 2024 (in relation to the clause under which the meeting was called).</p> <p>The applicant responded to the respondent stating:</p> <p><i>The email distributed to all Unit Owners, dated 11 January 2024 is misleading and provides false information. This is confusing for everyone. If an Annual General Meeting is now being called out, looking for a unanimous decision then I suggest that a new email is sent to the Unit Owners clarifying the confusion and for the meeting for 2 February 2024 to be cancelled.</i></p>	<p><b>Document 56</b></p> <p><b>Document 14</b></p> <p><b>Document 14</b></p>
1 February 2024	<p>The applicant emailed NT Property Management to advise that the committee had received legal advice regarding the Annual General Meeting scheduled – that it was invalid and did not comply with the Act. The applicant reiterated instructions from 18 January 2024 to cancel the meeting.</p> <p>The same day, the applicant emailed the members of the body corporate stating that the meeting had been called incorrectly and was cancelled on instruction of the committee.</p>	<p><b>Document 19</b></p> <p><b>Document 20</b></p>

2 February 2024	<p>NT Property Management circulated legal advice at 3.18pm from its lawyers supporting its position that the Annual General Meeting scheduled for the same day could proceed.</p> <p>On the same date at 4.29pm, the applicant's solicitors provided advice to NT Property Management opposing the Annual General Meeting proceeding. The Annual General Meeting was held later that day at 5pm.</p>	<p><b>Document 21</b></p> <p><b>Document 22</b></p>
2 February 2024	<p>At the Annual General Meeting, quorum was declared. The manager initially invited the chairperson (Ms Ocampo) to preside. Objections were raised by owners and a motion was passed (7–2) to appoint the manager as chair. The meeting further resolved that the Annual General Meeting be co-chaired by Mr John McLaren, described as an independent person. Seven members (including the applicant) were elected to the committee. A motion to appoint the body corporate manager proposed by the applicant was defeated (2–7). A motion to reappoint NT Property Management for 12 months from 18 May 2024 was carried (7–2). The Annual General Meeting also adopted the income and expenditure statement, set the budget and levies for 2024, and resolved various maintenance and insurance matters.</p>	<p><b>Document 24</b></p>
6 February 2024	<p>NT Property Management provided a copy of the 2 February 2025 annual general meeting minutes to the applicant via email.</p>	<p><b>Document 24</b></p>
6 February 2024	<p>Another member filed an application with NTCAT naming the applicant as respondent. It is understood that this application sought a declaration of some kind about ,the legality of the Annual General Meeting held on 2 February 2024</p> <p>On the same date, the applicant emailed NT Property Management seeking access to proxy forms used at the annual general meeting.</p>	<p><b>Document 26</b></p>
19 February 2024	<p>NT Property Management forwarded to the applicant a copy of the NTCAT initiating application and procedural orders made in those proceedings.</p>	<p><b>Document 26</b></p>
22 February 2024	<p>NTCAT listed a directions hearing for 15 March 2024 and notified both relevant member and the applicant.</p>	<p><b>Document 27</b></p>
28 February 2024	<p>A committee meeting was held. At that meeting officeholders were elected, and resolutions were passed purporting to suspend the</p>	<p><b>Document 28</b> <b>Document 94</b> <b>Document 95</b></p>

	applicant and another committee member. The applicant had earlier via email (on 22 February 2024) declared that the holding of the meeting with the new committee was a conflict of interest while the NTCAT proceedings were ongoing.	
25 June 2024	The NTCAT matter between the body corporate member and the applicant was withdrawn following agreement between the parties.	<b>Document 32</b>
1 July 2024	Sealed consent orders were circulated by the applicant to owners and to the department. The orders recorded that the parties to the proceedings had agreed that the termination of NT Property Management was valid, that the annual general meeting of 2 February 2024 and subsequent meetings were invalid, that the pre-2 February 2024 committee was reinstated, and that NT Property Management was to act only in a caretaker role pending a further annual general meeting.	<b>Document 33</b>
17 July 2024	The applicant informed owners that a vote had been taken to engage the other body corporate manager and issued a further 30-day termination notice to NT Property Management. This email also contained advice about the outcome of the NTCAT proceedings with an interpretation of the orders made on 1 July 2024	<b>Document 36</b>
8 August 2024	The proposed new body corporate manager sent an email to the owners of the unit plan advising it would not accept the engagement as body corporate management <i>“due to dysfunctional and unresolved internal conflicts within [the] building that significantly impact our ability to effectively manage the property”</i>	<b>Document 38</b>
16 August 2024	<p>Peter Grice circulated legal advice from another legal firm to the committee members elected at the 2 February 2024 Annual General Meeting. The advice stated that the NTCAT consent orders merely recorded an agreement between the individual parties and did not bind the body corporate.</p> <p>The applicant’s solicitors responded to Mr Grice’s email disputing the advice, and suggesting that Mr Grice should make an application to the NTCAT if he wished “to challenge [the applicant’s] lawful position”.</p> <p>The same day, another committee member (per the 2 February 2024 annual general meeting forwarded the correspondence to NTPM and advised:</p>	<p><b>Document 55</b></p> <p><b>Document 97</b></p> <p><b>Document 97</b></p>

	<i>I request due to the forthcoming special general meeting, please refrain from distributing any financial information until such time as the committee has the opportunity to review it in full.</i>	
19 August 2024	<p>At 9.08am, NT Property Management gave notice that it was resigning as manager. In the same communication, it stated it could not hand over records to the applicant without written authority from all committee members.</p> <p>The same day, at 2.18pm, another owner (and committee member per the 2 February 2024 Annual General Meeting wrote to the respondent to advise “I agree ... to not release financials”.</p> <p>At 6.18pm another wrote to the respondent and advised “I also agree ... all financials not to be released until the Special General Meeting.”</p>	<p><b>Document 83</b></p> <p><b>Document 98</b></p> <p><b>Document 99</b></p>

### **Role of Agents Licensing Board**

22. The AL Act regulates the licensing and conduct of real estate agents, business agents, and conveyancers. The Act outlines the requirements and obligations for agents operating in these sectors, including provisions for licensing, conduct, trust accounts, and dispute resolution. Body corporate managers are real estate agents for the purposes of the AL Act.
23. Section 64A of the AL Act provides that ‘[r]egulations may prescribe rules of conduct for Regulations 1979 (“AL Regulations”). The Real Estate Institute of Northern Territory has also published a voluntary code of conduct titled ‘Real Estate Practitioners Code of Conduct’ (Code of Conduct). This code was designed to ‘set boundaries of acceptable conduct in real estate practice and define minimum standards of behaviour expected’ of its members.
24. Section 65 of the AL Act provides that a ‘licenced agent must not breach the rules of conduct’. Section 65(4) provides that a company or firm is guilty of a breach of the rules of conduct for agents if: (a) the company or firm is a licensed agent acting on behalf of a client; and (b) a director or employee of the company or firm does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were a licensed agent, make the director or employee guilty of a breach of the rules of conduct for agents.

25. Section 110A(1) of the AL Act provides that ‘a licensed agent must ensure that there is at all times in the agent's service a business manager, who is a licensed agent appointed by the agent, in respect of each office of the business carried on under the licence.’ Section 110A(5) of the *AL Act* then provides that a ‘business manager must ensure that he or she exercises substantive and effective control of the day-to-day operations of an office in relation to which he or she was appointed’.
26. The Board may take disciplinary action if a ‘licenced agent has been guilty of a breach of the rules of conduct for agents’ pursuant to section 67(1)(c) of the AL Act.
27. Section 68(4) of the AL Act provides that the Board shall hold an inquiry where ‘an application for disciplinary action to be taken against a licensed agent is lodged in accordance with this section or the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent’.
28. The powers of the Board after the inquiry are outlined in section 68 of the AL Act. This section provides:
- (1) If, at the conclusion of an inquiry conducted under section 68(4), the Board is satisfied that it is authorised to take disciplinary action against a licensed agent, the Board may do one or more of the following:*
- (a) reprimand or caution the agent;*
- (b) by written notice, impose a fine not exceeding 50 penalty units on the agent;*
- (c) by written notice, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice;*
- (d) by written notice, revoke the licence of the agent.*
29. The inquiry hearing and process is governed by section 77 of the AL Act. The procedure is at the discretion of the Board, parties may be legally represented, and the Board is not bound by the rules of evidence but may inform itself in such manner as it thinks fit. Proceedings are open to the public.

### **Rules of Conduct**

30. The Board may consider whether the respondents have contravened any of following rules of conduct as contained in schedule 4 to the AL Regulations:

*Rule 5:* Subject to any other specific rules of conduct, a real estate or business agent must have due regard to and comply with:

(a) Rules of the Real Estate Institute of Northern Territory;

Specifically:

A Practitioner should act in the best interests of their Client. A Practitioner should at all times, exercise loyalty to the interests of the Client and should not act in any way which could be construed as being contrary to the best interests of the Client

*Rule 7:* An agent must ensure that the agent has a thorough knowledge of the practices and procedures of government offices relevant to transactions in which the agent may be involved with a client, in addition to a knowledge of the Act, the regulations, these rules and other relevant legislation as in force from time to time.

*Rule 11:* An agent must exercise due skill, care and diligence in carrying out the agent's duties on behalf of a client.

*Rule 12:* An agent must exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.

31. The Board will have regard to these rules of conduct when considering the application, respective replies, and associated evidence.

### **Discussion of the issues**

#### ***Ground 1 – administration under the wrong legislation***

32. Allegation and facts concerning ground 1

(1) The complaint was that the respondents administered the unit plan as though the *Unit Titles Schemes Act 2009* and its associated modules applied, rather than under the *Unit Titles Act 1975* and the *Unit Titles (Management Modules) Regulations 2009* which govern a standard plan. This error in the governing framework was said to have resulted in repeated procedural irregularities and confusion for proprietors.

(2) In an email of 10 January 2024 business manager stated that the appointment of the manager had been under the *Unit Title Schemes Act 2009* since 2011. This was in response to an email of 9 January 2024 from the applicant referring to the power of the committee under clause 51 [of schedule 1] of the *Unit Titles Management Regulations 2009* to engage with the manager without the holding of an annual general meeting.

- (3) The applicant subsequently sought confirmation from the Scheme Supervisor, who advised that the correct legislation was the *Unit Titles Act 1975* and the *Unit Titles (Management Modules) Regulations 2009*
- (4) The respondent's lawyer submitted that the references in documents to the *Unit Title Schemes Act 2009* were the result of using the wrong template and that the units plan was administered in accordance with the *Unit Titles Act 1975*.
- (5) At the hearing the business manager gave evidence that in preparing the email of 10 January 2024 he had relied on old templates.

33. Discussion concerning ground 1

- (1) Despite the email of 10 January 2024 there are various other documents that indicate that the *Unit Titles Act 1975* was being applied – for example, certificates were being issued under section 37 of the *Unit Titles Act 1975*.
- (2) The Board notes the similarity in the names of the two Acts and the commonality of much of the content of the two sets of regulations. This similarity is fairly often the subject of some confusion leading to wrong references. The Board also notes that the main significant differences between the two legislative schemes relate to the subdivision of land into units. Body corporate managers are generally not involved in those processes.
- (3) The Board also notes that there is no evidence that any decision was made that could be criticised on the basis that it was permitted under the *Unit Title Schemes (Management Module) Regulations 2009* but not permitted under the *Unit Titles (Management Module) Regulations 2009*. The two sets of Regulations have the same content regarding the appointment and termination of managers.

34. Finding concerning ground 1

- (1) The Board is inclined to accept the business manager's evidence that he was administering the units plan under the correct Act.
- (2) Nonetheless, the Board considers that it is important that body corporate managers inspire a level of confidence from owners of units. This is said noting that the body corporate legislation is notoriously difficult to administer and that minor disputes between members can quickly escalate into war. The

role of a body corporate manager is critical in ensuring that problems are dealt with in a competent way in accordance with the legislation.

- (3) Sending a muddled email (document 13) concerning the application of legislation to the chairperson of the body corporate committee does not inspire confidence. This is especially the case when the email in question is dealing with an issue raised by the chairperson and it related to the accuracy of advice provided by the body corporate manager (in this case about how to terminate the engagement of a body corporate manager).
- (4) The Board finds that the sending of email of 10 January 2024 (document 13) shows a lack of care and skill as referred to in rules 11 and 12 but that this, as such, does not indicate that the respondents were administering the unit plan under the wrong legislation.

***Ground 2 – The respondents failed to properly advise the committee of the procedural defects of the committee meeting held on 10 December 2023 and the committee’s resolution to change property manager***

35. Allegation concerning ground 2

- (1) The basic allegation is that the respondents refused to accept termination following the committee’s resolution to terminate management and engage a new body corporate manager. In doing so, the respondents provided incorrect advice on the requirements for terminating the management agreement.
- (2) At a committee meeting on 10 December 2023, followed by further committee discussion on 14 December 2023, it appears that the committee resolved to terminate the engagement of the agent and engage another agent (the new agent) to manage the unit plan. Negotiations with the proposed new agent had commenced.
- (3) Acting on this decision, the applicant as chairperson issued a notice on 4 January 2024 under clause 51 of the *Unit Titles (Management Modules) Regulations 2009*, providing 30 days’ notice and directing that all corporation records be handed over on 5 February 2024.
- (4) On 8 January 2024, the business manager replied advising that the appointment of a manager “must be decided at a general meeting of the body corporate” and that the applicant’s email “would not have immediate effect.”

- (5) When the applicant responded that the committee did in fact hold power under the *Unit Titles Act 1975*, the business manager asserted that, as mentioned concerning ground 1, “all along the appointment of the manager has been under the *Unit Titles Schemes Act 2009*” and that it “has got to be decided at a general meeting.”
- (6) In her email of 12 November 2025 (document 86) the applicant provided no explanation of the fact that the committee meeting’s decision about termination was not documented in the minutes that were distributed to members.
- (7) The following discussion is subject to the observation that the Board accepts that, on the information available to it, the termination of the management agreement was not effective.
- (8) What is less clear is that of whether the respondents were aware of the reasons for the taking the view that the termination was ineffective.
- (9) The Board considers that it is important to set out the rationale for the view that the termination was not effective.
- (10) The reasons for considering the termination to be ineffective are:
  - (i) The committee’s apparent decision to terminate the management agreement was not circulated to members of the unit plan in any minutes of the committee’s.
  - (ii) Clause 20(3) of schedule 1 of the *Unit Titles (Management Modules) Regulations 2009* provides that minutes of committee meetings must be circulated to all members within 21 working days of the meeting of the committee
  - (iii) Clause 20 of schedule 1 of the *Unit Titles (Management Modules) Regulations 2009* permits members to lodge a notice of opposition to a decision of the committee. Such an objection must be lodged within 7 working days of the giving of the notice about the committee’s decision
  - (iv) Clause 21 of schedule 1 of the *Unit Titles (Management Modules) Regulations 2009* provides that the committee can only give effect to its decision after the expiry of the period in respect of a notice of opposition can be given

- (v) If a committee decision has not been circulated it follows from clause 21 of schedule 1 of *Unit Titles (Management Modules) Regulations 2009* that there was no period in respect of which there could have been notice and that there is no decision that can be acted upon.
  - (vi) In respect of the procedural defect, it could have been easily remedied by the committee meeting again and providing a copy of its decision to members.
- (11) Instead of focussing on the fixable patent procedural defect the business manager took the view that there needed to be a body corporate decision, made at a general meeting, in order for a management agreement to be terminated. He based this view on the fact that at the previous annual general meeting the agent had been appointed as the managing agent.
- (12) This occurred despite information provided to the business manager by supportive owners that the committee had failed to comply with the legislation concerning termination (email dated 11 January 2024, document 54).
- (13) The relevant provisions of the *Unit Titles (Management Modules) Regulations 2009* concerning the appointment of managers are:
- (i) clause of schedule 1 of the *Unit Titles (Management Modules) Regulations 2009*: A mandatory agenda item for an annual general meeting is that of “consideration of the engagement of a manager” (clause 28(b) of schedule 1 of the *Unit Titles (Management Modules) Regulations 2009*)
  - (ii) The power of the committee to engage a manager to provide administrative services (clause 51(1) of schedule 1 of the *Unit Titles (Management Modules) Regulations 2009*)
  - (iii) clause 51(3) of schedule 1 of the *Unit Titles (Management Modules) Regulations 2009*: which indicates that the appointment must be documented and which gives the committee the power to terminate (with the implication that termination requirements are set out in the contractual document).
- (14) The management agreement is drafted without any clear provision for the committee to terminate a management agreement.
- (15) The Board accepts that the relationship between these clauses is not particularly clear. However, the business manager should have known that

the committee is responsible for the day to day administration of the management agreement. He should have been able to advise both the committee and the others who had opposed the purported termination concerning the status of the purported termination.

(16) Instead, the business manager reacted to complaints by Peter Grice and others by calling into question the decisions of the committee made on 10 December 2023.

(17) Under both sets of legislation it is the responsibility of the committee to engage a body corporate manager.

36. At this point the Board notes a decision of NTCAT dated 26 June 2024. By this decision NTCAT permitted a committee member to withdraw proceedings between himself and the applicant. The proceedings related to the validity of the annual general meeting. As part of its orders, NTCAT noted amongst other matters that the parties to the proceedings had agreed that the termination was valid, that the annual general meeting of 2 February 2024 was invalid and that all committee meetings after that annual general meeting were also invalid.

37. Based on this “noting” by NTCAT it appears that the applicant assumed control of the body corporate. She provided interpretative documents and emails dated 1 July 2024 (document 33) and to unit owners. The applicant appears to have accepted the NTCAT notes as being determinative of the legal position.

38. A problem with NTCAT’s orders is they only noted an agreement between 2 persons. They did not represent findings by NTCAT on the legal issues. This meant that the orders did not, of themselves, resolve any of the issues. Eventually, authoritative legal advice was obtained by Mr Grice and another owner, confirming that the notes to the NTCAT order did not provide any kind of binding judgment on the issues in dispute.

39. The Board’s finding is that the business manager breached rule 11 by failing to provide appropriate advice and information to the committee and the body corporate concerning the purported termination of the management agreement.

**Ground 3 – The respondents failed to provide the applicant and the committee with a proper response to their notice of termination and request for documentation**

40. Allegation concerning ground 3

- (1) Following the committee's attempted termination of the management agreement, the applicant repeatedly sought the handover of records to the proposed new agent.
- (2) In her notice of 4 January 2024 the applicant directed that records be provided by 5 February 2024.
- (3) Despite further requests in July and August 2024 (by which time the respondents had resigned), including requests for current financial statements and levy details in preparation for the 14 August 2024 annual general meeting, the respondents refused to provide the records and restricted access to the corporation's online portal.
- (4) This obstruction prevented the corporation from finalising its accounts and from proceeding with scheduled meetings, ultimately causing the postponement of the August annual general meeting.
- (5) The business manager:
  - (i) maintained that he was not obliged to hand over the records on the basis of the applicant's direction.
  - (ii) contends that the committee's purported termination was invalid under the *Unit Titles (Management Modules) Regulations 2009*, and therefore of no effect. He relies on clause 22 of the *Unit Titles (Management Modules) Regulations 2009*, which renders committee decisions void where they are not recorded in minutes and circulated to owners in accordance with clauses 19 and 20.
  - (iii) points to the terms of the management agreement, which required 30 days' notice of termination, and states that records would be available on 17 August 2024, consistent with that contractual notice period.
  - (iv) asserts that he could not release records to an individual committee member without proper written direction from the committee.

41. To an extent these justifications, particularly relating to the distribution of the minutes of the termination decision, are made with the benefit of hindsight. There is no evidence that the business manager had any awareness that the main problem in the way the

committee was arranging for the termination. This was despite the fact that a substantive issue raised with him by Mr Grice in his email of 11 January (document 53) was the lack of consultation of the committee with the other members of the unit plan. The business manager was aware of the issue but did not pinpoint the legal basis for being able to express the concern about the absence of consultation.

42. Nonetheless, the committee's original attempted termination of the agent was procedurally invalid, with the result that agent remained manager of the unit plan. Strictly speaking, this meant the business manager was not compelled under clause 51 *Unit Titles (Management Modules) Regulations 2009* to hand over records as if termination had taken effect.
43. The Board takes the view that issues concerning the handing over of documents were largely consequential to the view taken by the business manager after the effect of the purported termination. In all of the circumstances the respondents were entitled to continue to maintain their role (including the keeping possession of documents) pending the outcome of the disputes about termination. That is, by the time that any documents might have been required to be handed over, it was clear that there was a significant difference of opinion within the body corporate about who should be the body corporate manager; and that action of some kind would occur for the purpose of resolving the problem.
44. The Board accepts that in these situations where the manager has to make a choice between which faction to follow it is probably best to maintain the status quo pending the holding of an appropriate general meeting.
45. The Board finds that there has been no breach in terms of ground 3.

***Ground 4 – The respondents failed to provide clear, accurate and consistent advice with respect to the calling of the general meeting on 2 February 2024***

46. The allegation is that the respondents provided incorrect and inconsistent advice with respect to the convening of a meeting to deal with the issues.
47. Under schedule 1, clause 29 of the *Unit Titles (Management Modules) Regulations 2009* a meeting of the unit plan (including an annual general meeting can be called by the Chairperson (29(1)(a)), the Secretary (29(1)(b)), the manager (29(1)(c) or a group of members with 25% of voting entitlements (29(1)(d)).
48. The evidence relating to the allegation is that:

- (1) On 11 January 2024 the business manager sent an email (document 54) to owners saying that:

*“a collective of owners (who hold more than 25% of total interest entitlements) have stated that they oppose the decisions stated [in] the committee meeting minutes sent via email on 18<sup>th</sup> December 2023*

*They have called a General Meeting for the body corporate to be held on Friday 2<sup>nd</sup> February 2024 ...*

*The agenda items they wish to include are:*

*>election of a new committee*

*>appointment of Managing Agent*

*Further to their request please see attached General Meeting Pack ...”*

- (2) The meeting pack appears to have included the standard agenda paper for an annual general meeting.
- (3) On 15 January 2024 the business manager sent an email to the applicant (document 14) stating that:

*“we have been contacted by a group of owners representing more than 25% of unit entitlements ... They have expressed a preference to remain anonymous until the upcoming meeting.*

*This group ... exercised their right to call a general meeting, which has been scheduled for the 2<sup>nd</sup> of February 2024. The meeting request was based on the prevailing confusion surrounding recent decisions made by the Committee, and the owners aim to address their concerns collectively at the meeting.*

*I want to emphasise, Evelyn, that my involvement in convening this is in direct response to the concerns raised by these owners.*

- (4) At the Board's hearing the business manager repeatedly stated that he had not ever said that the meeting was being called under clause 29(d).
- (5) This claim may have been literally correct in that he did not ever refer to 29(d). However, it is disingenuous and argumentative. The plain reading of the email of 15 January 2024 is that the business manager was arranging a meeting following what he considered to be a request made under clause 29(d).
- (6) The committee queried this and requested evidence of the 25 percent mentioned in the request. The committee also contended that the correct mechanism to oppose a committee decision was by 50 percent of unit

entitlements under clause 20 of the *Unit Titles (Management Modules) Regulations 2009* – that is, not 25 percent.

- (7) When requested to provide details of the persons seeking the meeting the business manager provided inadequate information
- (8) On 16 January 2024 the business manager received an email from the department (document 56). Amongst other matters the department noted that an ordinary general meeting cannot appoint a body corporate manager and that such an appointment can only be made at an annual general meeting. Whether or not this advice is correct, it may have been a factor in the business manager ensuring that the meeting was categorised as an annual general meeting.
- (9) On 17 January 2024 the business manager responded to the applicant's email of 15 January by stating that the meeting had in fact been convened under schedule 1, clause 29(c) of the *Unit Titles (Management Modules) Regulations 2009*, which empowers the manager to call an annual general meeting..
- (10) He said the reference to 25 percent of members had caused misunderstanding, but that the meeting was being held as an annual general meeting in the best interests of the corporation to provide a forum for discussion and decision-making.
- (11) The manager says that while initial correspondence may have created confusion, the decision to call an annual general meeting was deliberate, lawful, and in the best interests of the corporation.
- (12) In the lead up to the February 2024 annual general meeting there were competing emails from the applicant and from another group of owners. The applicant sought to cancel the meeting and to tell the owners that the meeting is cancelled. Mr Grice distributed on 31 January 2024 (document 21) a letter outlining various concerns with the committee including the failure to comply with the regulations regarding distribution of the minutes concerning the termination.
- (13) On 2 February 2024 the business manager distributed authoritative legal advice on the validity of the meeting. Later that day less authoritative legal advice was distributed by the applicant with the lawyer saying that the business manager must not hold or run the annual general meeting.

49. Discussion concerning ground 4
50. As background, the Board has no doubt that it was appropriate for a meeting to be held for the purpose of resolving the issues.
51. It appears that the business manager initially represented the meeting as an annual general meeting by 25 percent of members under clause 29(d) of the *Unit Titles (Management Modules) Regulations 2009*, but when challenged on the validity of that requisition, he re-characterised it as an annual general meeting convened under clause 29(c). The shift in rationale caused confusion. It is not obvious why he changed tack, from the statutory declarations executed by Mr Grice and others in August 2025 it would appear that there was support in January 2024 from members with 25% of the unit entitlements (document 86)
52. In turn, the committee's reliance on schedule 1, clause 20 of the *Unit Titles (Management Modules) Regulations 2009* (which requires 50 percent of unit entitlements to oppose a committee resolution) was misplaced. Clause 20 was not relevant - because the committee's resolution to terminate the management agreement was not recorded in minutes circulated to proprietors. Without properly recorded minutes, owners had no opportunity to exercise opposition rights under clause 20.
53. In any event, the opposition mechanism in clause 20 and the provisions in clause 29 for calling a general meeting are distinct. The fact that clause 20 was not engaged did not prevent a meeting being validly requisitioned by owners under clause 29(d) or convened by the body corporate manager under clause 29(c).
54. The department and the applicant both pointed out to the business manager that there were deficiencies with his proposals concerning the overturning of the committee's decisions and the appointment of a manager. It seems that he responded by organising a meeting under clause 29(d).
55. While the meeting may have complied with the formal requirements of clause 30 of the *Unit Titles (Management Modules) Regulations 2009* for notice of an annual general meeting, given the disputes already arising about the validity of the committee's termination decision (see ground 2), the manager's approach appeared to increase uncertainty.

56. In summary:
- (1) A meeting was originally contemplated to overturn a decision of the committee of the body corporate.
  - (2) It became apparent that this would not solve the problem and that a general meeting would be required.
  - (3) In turn the general meeting morphed into an annual general meeting held some 2 or 3 months earlier than might otherwise have been the case.
57. The Board also notes:
- (1) There are obvious problems from the fact that the legislation provides more than one person with the power to call an annual general meeting. This is especially the case when one person with that power (the committee) disagrees with what another empowered person (the manager) is trying to do. This is said noting that the applicant also said she was trying to arrange a special meeting.
  - (2) In general terms, as a matter of policy, a manager should only call a general meeting on instructions from the committee or if such a meeting is due to occur (for example, the usual annual general meeting) or if there is chronic dysfunction. A manager should not call an annual general meeting if the only purpose is to overturn a decision from the committee to terminate the management agreement.
58. The Board accepts that it was a sensible decision to have a general meeting of the body corporate to deal with the issues and that it did not really matter which clause was used for the calling of the meeting.
59. Finding concerning ground 4
60. Despite the fact that the business manager had the legal power to call a meeting and that it was sensible to have such a meeting, the Board's finding is that the business manager did not exercise due care and skill in arranging for a meeting to deal with the various issues. The way in which the meeting was arranged caused unnecessary further friction.

***Ground 5 – The respondents failed to properly guide the corporation in the conduct of the general meeting held on 2 February 2024, particularly with respect to the position of chair and calculation of quorum***

61. Allegation concerning ground 5

- (1) Although the applicant was chairperson of the committee and therefore entitled to chair the annual general meeting under schedule 1, clause 35 of the *Unit Titles (Management Modules) Regulations 2009*, the business manager facilitated a non-member, John McLaren, to chair or “co-chair” the meeting.
- (2) Owners in arrears with contributions and therefore not entitled to vote under schedule 1, clause 42 *Unit Titles (Management Modules) Regulations 2009* (unfinancial members) were incorrectly counted towards the quorum
- (3) Ordinary resolutions were declared without statutory basis, and that the meeting proceeded despite legal correspondence advising it should not go ahead.

*Chairperson issue*

62. The background to the appointment of an independent co-chair of the meeting appears to be as follows:

- (1) A departmental member, acting as part of the administration of the scheme supervisor role, advised the applicant, the other committee members and the business manager that it would be appropriate to have an independent chairperson (email dated 15 January 2024, document 16). This email appears to have followed a telephone discussion earlier to the day.
- (2) The business manager commenced talking with Mr McClaren
- (3) Independently of those events, Mr Grice’s evidence was that he and a number of other owners (who he identified in his evidence) took the view that the applicant should not chair the meeting
- (4) A few days before the meeting Mr Grice approached the business manager about obtaining an independent chair
- (5) The business manager gave evidence that by the time a few days before the meeting, Mr Grice would have been aware that Mr McClaren was to be at the meeting

- (6) Mr McClaren attended the meeting
- (7) The business manager opened the meeting and then handed over responsibility to the applicant for chairing the meeting
- (8) Members objected and appointed the business manager as the chairperson.
- (9) There were further discussions with the result that Mr McClaren became involved in chairing the meeting. There is some confusion as to whether he was co-chairing or merely assisting the business manager. The Board's impression is that the persons attending the meeting probably considered that Mr McClaren was acting as the chair.

63. Assessment – ground 5

64. Clause 35(1) of the *Unit Titles (Management Modules) Regulations 2009* makes it clear that the committee chairperson must preside at a general meeting unless unable to act.
65. If the Chairperson is unable to carry out the role, clause 35 of the *Unit Titles (Management Modules) Regulations 2009* sets out the persons who can act as the Chairperson. Such a person can only act as Chairperson if they are a member with a right to vote (that is, financial) of the corporation or if they are the manager.
66. The applicant was present and willing to chair. Mere dissatisfaction with the chairperson seems unlikely to constitute inability to act. In such circumstances the applicant should have chaired, and the decision to allow an outsider to chair/co-chair was contrary to the statutory framework.
67. Mr McClaren gave evidence that it is common for meetings that a chairperson be replaced at the will of the meeting if the person has lost the confidence of the group. With respect to Mr McClaren this seems like a policy outcome with there still being a need for a mechanism, within the statutory framework, to reach that outcome
68. If the chairperson had genuinely been unable to act, clause 35(2) of the *Unit Titles (Management Modules) Regulations 2009* provides that the manager must then chair, and only if both were unable could the members elect a substitute from among themselves. There was no clear basis for appointing Mr McClaren, who was not a proprietor, to preside in any capacity.
69. However, it is noted that on 15 January 2024 a departmental officer advised both the business manager and the applicant to consider engaging an independent person or

the Community Justice Centre to chair the meeting. This was suggested out of concern the annual general meeting might become heated.

70. Later on, in respect of subsequent issues, lawyers for the factions also agreed that there should be an independent person.
71. It appears reasonable that in these kinds of circumstances to try to find an independent person. The issue is “what should be the mechanism for achieving that outcome?”
72. In this situation the business manager made no effort to engage the applicant (or her supporters) in working out who should be the chair. Instead:
  - he handed over the chairing of the meeting to the applicant;
  - there was a motion from the floor that the applicant does not chair the meeting
  - Mr McClaren in accordance with an arrangement made by the business manager was present and able to co-chair the meeting.
73. This process was problematic because it ambushed the current Chairperson and her supporters. It also did not lead to having an independent chairperson noting the business manager’s vested interests concerning the appointment of a manager.

*Quorum issue*

74. The business manager made the assessment that there was a quorum. It is clear from his version of the minutes that he made a mistake in counting unit entitlements. That is, he included the unit entitlement non-financial members. This mistake was acknowledged in a letter from respondents’ lawyers (**Document 90** – 11 November 2025)
75. At the hearing the business manager said there was a computational error in determining the quorum. In an interchange with the Board’s chairperson he appeared to agree that the unit entitlements was about 49.5%. That is, a total that below the threshold for a quorum
76. At the hearing Mr McClaren gave evidence that there was a quorum. He said that:
  - the non-financial members had a right to attend the meeting and thus could be counted for the purposes of the quorum
  - the unit entitlements of non-financial members can be counted for the purposes of determining whether there was a quorum

- non-financial members could not vote
  - even if the 3 non-financial members were not counted there was still a quorum (and he identified the 3 persons who would not be counted)
77. This view about the quorum seems to be wrong. Clause 31 provides that there is a quorum if the persons present with a right to vote have 50% or more of the unit entitlements. A person does not have a right to vote if they are not financial (clause 42).
78. Clause 42 of the *Unit Titles (Management Modules) Regulations 2009* excludes members in arrears from voting.
79. In respect of the quorum issue the applicant considered that the miscalculation demonstrated poor governance rather than there was not actually a quorum. This meant that the Board’s hearing was conducted on the basis that “quorum was ultimately achieved”

Finding regarding ground 5

80. The Board considers that the respondents have breached rules 11 and 12 in respect of:
- the handling of the chairing of the annual general meeting
  - the counting of non-financial members for the purpose of determining the quorum.

***Ground 6 – The respondents failed to properly guide and advise the committee with respect to the purported suspension of members at the committee meeting held on 28 February 2024***

81. Allegation for ground 6

- (10) At the committee meeting of 28 February 2024, a new chairperson was elected and the committee then purported to stand down from the committee the applicant and another member for alleged breaches of conduct.
- (11) The applicant had already declared a conflict of interest at this meeting arising from ongoing NTCAT proceedings, but despite this declaration, the committee proceeded to vote on her “suspension” from office.
- (12) The business manager submits that a majority of the committee was present at the meeting and resolved to remove the applicant and another member on the basis of their past conduct.

- (13) However, the *Unit Titles (Management Modules) Regulations 2009* provides a process for the removal of committee members for breach of the code of conduct. Under clause 9, this process requires:
- (i) written notice to the committee member setting out the alleged breach and the reasons,
  - (ii) an opportunity of at least 21 working days to respond, and
  - (iii) a motion put to the next general meeting to decide the matter.
82. There is no mechanism under the *Unit Titles (Management Modules) Regulations 2009* to “suspend” a committee member by resolution of the committee alone. The documents available do not show that the required written notice had been issued prior to the 28 February meeting, and there is no evidence that the matter was referred to a general meeting.
83. The purported suspensions were ineffective. The applicant and the other member remained entitled to continue in office unless and until the prescribed process under clause 9 of the *Unit Titles (Management Modules) Regulations 2009* was followed. The applicant’s conflict of interest declarations was appropriately made and recorded in accordance with clause 61. These declarations did not, of themselves, authorise the committee to bypass the statutory removal path.
84. The approach taken at the 28 February 2024 committee meeting illustrates the same pattern seen in earlier complaints: Decisions being made outside the processes required by the *Unit Titles (Management Modules) Regulations 2009*, with the effect of undermining governance and escalating disputes within the corporation.
85. Mr Grice as chairperson of the meeting gave evidence that he was responsible for this decision. He did not recall seeking or getting any advice on the issue from the business manager. The business manager gave evidence that he tried to advise Mr Grice that the course of action was problematic. If this did occur the advice was ineffectual.
86. The Board also notes that the main reason in the minutes for the suspension was that of dealing with conflicts arising from the body corporate’s participation in legal proceedings where the applicant was a party. This issue could have been dealt with ways other than a suspension.
87. Findings regarding ground 6

88. The Board:

- finds that the business manager did not exercise due care skill and diligence (in terms of rules 11 and 12) in that the business manager did not provide effectual advice about a course of action that was plainly in breach of the legislation
- notes that even if such advice had been provided it probably would not have affected Mr Grice's actions.

**Summary of outcomes in terms of the complaints made by the applicant**

89. In summary the Board has found the following breaches

- (1) the respondents have breached rule 11 in that they did not exercise due skill, care and diligence in dealing with the purported termination of the management agreement.
- (2) the respondents breached rule 11 by failing to provide clear, accurate and consistent advice regarding the calling of the annual general meeting of 2 February 2024.
- (3) The respondents breached rule 11 in that they failed to exercise due skill, care and diligence the annual general meeting of 2 February 2025.
- (4) The respondents breached rule 11 in that they failed to exercise due care skill and diligence concerning the suspension of members of the committee.

**Responsibility of business manager for breaches by the agent**

90. Regulation 18 of the *Agents Licensing Regulations 1979* provides that:

*“A provision of Part V or XII of the Act or these Regulations that requires a licensed agent to do, or to refrain from doing, an act or to carry out an obligation shall, in the case of a licensed agent which is a company or firm, be read as imposing jointly and severally on:*

*(a) in the case of a company which is a licensed agent – a licensed agent who is a business manager, employee or director of the company; ...*

*a like requirement to do, or to refrain from doing, the act or to carry out the obligation, as the case may be, in relation to the business of the licensed agent.”*

91. Regulation 18 means that the business manager is deemed to have also breached any breaches of the Regulations by the agent.

## **Penalties**

92. The powers of the Board after the inquiry into a licensed agent are outlined in section 68 of the AL Act as follows:

*“68. If, at the conclusion of an inquiry conducted under section 68(4), the Board is satisfied that it is authorised to take disciplinary action against a licensed agent, the Board may do one or more the of the following:*

- (1) reprimand or caution the agent;*
- (2) by written notice, impose a fine not exceeding 50<sup>2</sup> penalty units on the agent;*
- (3) by written notice, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice;*
- (4) by written notice, revoke the licence of the agent.”*

93. All the possible penalties are serious for persons in professions and licensed occupations. They all adversely impact on reputation. The outcomes of this matter, including the penalties, will be published as required by section 84A(1) of the AL Act.

94. At the conclusion of the hearing concerning evidence the Board outlined its findings on each of the grounds and indicated that, subject to submissions on behalf of the respondents, it intended:

- a. to find that the respondents had breach the rules of conduct; and
- b. to impose the penalty of a “caution”.

95. Counsel for the applicant accepted this outcome on behalf of his client and on that basis did not provide detailed submissions. In noting the Board’s advice that the reasons for decision would be published he asked that the reasons set out the toxic way in which the body corporate was operating in 2023/24.

96. The findings of the Board outlined in these reasons are consistent with those briefly enunciated at the end of the inquiry excepting that the Board no longer considers that the business agent was guilty in terms of ground 1 (see paragraph 33(4) for the reason for this change).

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<sup>2</sup> 50 penalty units is \$9450 for the period 1 July 2025 – 30 June 2026. *Penalty Units Regulations 2010*

### ***Explanation of the penalty***

97. In previous decisions the Board has outlined some principles or factors for determining the appropriate penalty<sup>3</sup>. These were based principles laid out by the Western Australian State Administrative Tribunal for determining actions to be taken for breaches of occupational codes of practice and laws<sup>4</sup>.

98. These 12 principles along with an assessment of the application of them to the Board's findings in this matter, are:

- *any need to protect the public against further misconduct by the agent.*

The Board's assessment is that most of the breaches were of a relatively minor nature arising out of very strained relations between the members of body corporate. None of the beaches, of themselves, led to any significant harm to any member of the public.

The main harm arising out of the breaches was the continuing wasting of time and resources including the costs of obtaining legal advice and the conduct of at least 2 matters involving NTCAT.

- *the need to protect the public through general deterrence of other agents from similar conduct.*

The Board's assessment is that the problematic conduct of the kind that occurred in this matter should be brought to the general attention of body corporate managers. They are a significant conduit in ensuring that the management/governance legislation is correctly applied.

- *the need to protect the public and maintain public confidence in the profession by reinforcing a high professional standard and denouncing transgressions and thereby articulating the high standards expected of the profession such that, even where there may be no need to deter an agent from repeating the conduct, the conduct is of such a nature that the Tribunal should give an emphatic indication of its disapproval.*

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<sup>3</sup> See Salimi v Milgate and Milgate Real Estate, decision dated 23 January 2024, paragraph 101

<sup>4</sup> *Commissioner for Consumer Protection v Murray [2017] WASAT 137*

There is a need to ensure that clients and others have confidence that complaints will be taken seriously if they suffer because of the breaches of this kind.

- *in the case of conduct involving misleading conduct, including dishonesty, whether the public and fellow agents can place reliance on the word of the agent.*

Not applicable. The Board did not find that any of the conduct was deliberately misleading.

- *whether the agent has breached any legislation or industry codes of practice or guidelines and whether such a breach was intentional.*

No clear applicability. No substantive evidence that the errors were intentional.

- *whether the agent's conduct demonstrated incompetence, and if so, to what level.*

The problematic conduct does not suggest overall incompetence.

- *whether or not the incident was isolated such that the Tribunal can be satisfied of the agent's worthiness or reliability for the future.*

To the extent that some of the breaches were in the main inappropriate reactions to a developing situation. The Board is fairly confident that the business manager has learnt from the events.

- *The agent's disciplinary history*

There have been no other disciplinary matters for either the business manager or the agent.

- *whether or not the agent understands the error of his or her ways, including an assessment of any remorse and insight (or a lack thereof) shown by the agent, since an agent who fails to understand the significance and consequences of misconduct is a risk to the community.*

The Board does consider that the business manager should have an understanding of the general nature of the breaches found to have been committed.

- *the desirability of making available to the public any special skills possessed by the agent.*

Not applicable.

- *the agent's circumstances at the time of the conduct and at the time of imposing the sanction. However, the weight given to personal circumstances cannot override the fundamental obligation of the Tribunal to provide appropriate protection of the public interest in the honesty and integrity of real estate sales representatives and in the maintenance of proper standards of real estate sales representative practice.*

The main personal circumstance is that the business manager was, it appears on the evidence before the Board, being treated by the committee in an unfair way. This led to somewhat erratic responses to the developing issues.

- *any other matters relevant to the agent's fitness to practise and other matters which may be regarded as aggravating the conduct or mitigating its seriousness. In general, mitigating factors such as no previous misconduct or service to the profession are of considerably less significance than in the criminal process because the jurisdiction is protective not punitive.*

As noted in the Board's recent decision in *Nguyen v Elite and Bernattek*<sup>5</sup>, the Board considers that some of the respondents' breaches in this matter undermine what is sometimes referred to as "the honour of the profession" or put another way, undermine consumer confidence in the profession. These are matters such as the sloppy handling the termination, the calling of the general meeting, the running of the meeting and the suspension of the members of the committee.

Agents are used in body corporate management for the purposes of, amongst other matters, ensuring unit owners can have some confidence that their body corporate can successfully manage the relatively complicated processes of both complying with the legislation and dealing with the differing perspectives of the various owners.

#### Toxic environment

99. In determining the penalty the Board had regard to the environment in which the respondents were operating. Aside from the simple difficulty of dealing with factions there were some actions of the committee that placed unnecessary pressure on the business manager.

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<sup>5</sup> Decision dated 11 September 2025

### *Non signing of the management agreement*

100. One of these was that the committee had not signed the management agreement in the 7 or so months following the decision at the 2023 annual general meeting that the agent be appointed to continue on as the manager. This probably created uncertainty for the business manager given that the likely legal situation was that the former agreement (signed in 2021) probably applied. If the old agreement applied there was a much shorter period regarding notice of termination. Section 65C of the AL Act provides that such agreements must be writing – that is, signed. It appears that the applicant considered the relevant contract to be the 2021 contract.

### *Secrecy about the termination*

101. In the chronology of events provided by the applicant (dated 26 February 2024, document 8) the applicant noted:

*“18/12/23 – Ace distributes to Unit Owners the Committee Meeting Minutes from 10/12/2023*

*Meeting minutes excluded the decision to terminate the agreement with Ace”*

102. The evidence from the business manager was that the applicant prepared the minutes, and that they did not ever include any decision about the termination. If this is so, it was somewhat disingenuous for the applicant to imply that it was the business manager who had “excluded” the termination decision.

103. The applicant provided no explanation for not including details in the minutes concerning the committee’s decision about termination of the management agreement. There may have been an innocent explanation for this (such as ignorance of the requirements), However, the applicant did not attend the hearing meaning that the Board had no opportunity to determine what might have been background to this leading cause of the problems.

### ***Penalties in previous decisions***

104. The Board had regard to the following previous decisions:

105. *Liet v Alice Springs Realty Pty Ltd. Henricks and Rowan (24 November 2023)*

- (1) Unprofessional and abusive communications

- (2) The penalty was \$2355 for the company, caution for Hendriks and \$1570 for Rowan<sup>6</sup>
106. *Ordough and others v Whittles Body Corporate Management* (decision made 5 May 2021)
- (1) Body corporate manager failed to follow correct process in dealing with a dog application
  - (2) The penalty for this breach was a reprimand.
107. *Management Committee Units Plan U2000/083 v Purcell and Gradsha Pty Ltd* (30 May 2014)
- (1) Failure of body corporate manager to provide various records to the committee
  - (2) The penalty was a fine of \$750 and requirement to issue a letter of apology.<sup>7</sup>
108. *Butler v Whittles Body Corporate Management* (9 May 2014)
- (1) Inaccurate information provided regarding plumber's report
  - (2) The penalty, as imposed by the Local Court on appeal, was a fine.
109. *Arbon v Killner* (17 June 2014)
- (1) Alteration of contract of sale without client's consent
  - (2) Failure to ensure client understood contract
  - (3) Adverse outcomes for the client
  - (4) The penalty was a reprimand
110. *Pope v Jones* (26 October 2016)
- (1) Various communications failures
  - (2) the penalty was a reprimand

**Penalty**

111. Based on these decisions (particularly *Ordough and others v Whittles Body Corporate Management*) and views expressed elsewhere in these reasons concerning the

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<sup>6</sup> At the time the maximum possible fine was \$7850

<sup>7</sup> Commissioner for *Consumer Protection v Murray* [2017] WASAT 137

seriousness of the breaches and the context of the breaches the Board makes the following determinations:

- (1) The business manager is cautioned as set out below
- (2) The agent is cautioned as set out below

112. The words of the caution are:

For future dealings with bodies corporate, their committees and their members the respondents are cautioned:

- To be extremely careful to ensure that they can be seen to be acting for the body corporate as a whole taking into account the interests and rights of the individual members and the legal rights and responsibilities of the committee.
- To ensure, as best possible, that communications are open and transparent. This requirement is qualified in the circumstance where a member is engaged in legal proceedings – in which case, as a general rule, manager’s responsibilities are to act on the instruction of the committee.
- To be extremely careful in providing advice about the way to achieve a particular outcome – that is, take the time to identify the facts and the issues and find a solution in terms of the legislation rather than responding in an ad hoc manner to an issue.
- If there is conflict between the committee and the manager, consider giving notice of intention to resign the management role.
- To provide appropriate advice even where it might be plain that a key player is determined on a course of action regardless of any advice
- To take heed of the Board’s views on legal and operational issues as set out in these reasons. For example, the Board will be disturbed if the respondents continue to hold, in the absence of their own supportive legal advice, the view that only the body corporate can terminate a management agreement or that a committee can suspend its own members as occurred in this matter.

### **Right of review**

113. Section 85(3) of the AL Act provides that an affected person can apply to the NTCAT for a review of decisions of the Board.

114. For the purposes of section 85(3), “affected persons” include the applicant, agents and agents representatives affected by the decisions.

115. For a decision that includes the reasons for the decision an application for review must be made within 28 days of the day of notification to an affected person of the decision in the matter.

A handwritten signature in black ink on a light grey background. The signature reads "Bradshaw" in a cursive, slightly slanted script.

Dated 24 December 2025

Robert Bradshaw

Chairperson (for Agents Licensing Board of the Northern Territory)