



# That Sinking Feeling

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On 21 May 2020 the Queensland Parliament passed the *Justice and Other Legislation (Covid-19 Emergency Response) Amendment Act 2020*. The Act includes a new Part 3 into Chapter 7 of the *Body Corporate Community Management Act 1997*.

The purpose of the new provisions is to help alleviate the financial burden caused by the Covid-19 emergency on Bodies Corporate and Lot Owners.

There are 5 measures adopted to help achieve this goal.

The first relates to sinking fund budgets. In essence, the new Section 323D enables Bodies Corporate to adopt sinking fund budgets, if they have not already done so, which defer anticipated major expenditure that would otherwise have been due; but only for that particular years' budget. If the sinking fund budget has already been adopted, and it contains an anticipated item of major expenditure due to take place during the current financial year, then the Body Corporate can remove or reduce that anticipated major expenditure amount from the budget. That is, the Body Corporate can reduce the scope of work for that item or do away with that item altogether. If the Body Corporate does this, then the Body Corporate **must** refund to Lot Owners the proportion of the contributions paid by each Owner that is not required because the item of major expenditure has been removed, or reduced.

New Section 323E deals with contributions (levies). Here, the Committee of the Body Corporate can decide to extend the due date for payment of contributions to a day which is no later than the end of the Body Corporate's financial year. This allows the Committee to grant Owners a "grace period" to pay their contributions. The power to extend the due date can be exercised in relation to **particular** Lot Owners, or for **all** Lot Owners. In relation to the power to extend in respect of particular Lot Owners, the Committee must be satisfied that the Lot Owner is suffering financial hardship because of the Covid-19 emergency. On the other hand if the decision to extend the due date is made for all Lot Owners, it does not matter whether all Lot Owners are suffering due to the Covid-19 emergency or not. In either case, when exercising the power to extend the due date, the Committee must ensure that the Body Corporate is still able to meet its' necessary and reasonable spending requirements for the current financial year.

New Section 323F deals with penalties for late payment of contributions. 'Penalties' are actually interest.

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**If you or your  
Body Corporate have  
financial trouble, then  
Stratum Legal  
may be able to help.**

**Contact Michael to discuss.**

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Where a contribution falls due between 21 May 2020 and 31 December 2020, or a Lot Owner is already in arrears, no penalties will accrue in respect of that new debt, or the pre-existing debt during the relevant period.

New Section 323G permits a Body Corporate to hold off commencing (Court or Tribunal) proceedings to recover unpaid contributions. The Body Corporate can still commence proceedings if it wishes to, it is simply not forced to. Pre-existing proceedings are not affected by this new provision.

Finally, Section 323H makes it easier for Bodies Corporate to borrow money. In most regulation modules there is a (fairly low) limit up to which the Body Corporate may borrow with a low level of authorisation; i.e. an Ordinary Resolution at a General Meeting, or a Committee Resolution. Those limits have been raised to \$6,000 in Small Schemes and in all other regulation modules the limit has been raised to \$500 multiplied by the number of Lots in the scheme. In summary, up to the new limits the lower level of authorisation can be used and above the new limits the higher level of authorisation will be required.

All of these new provisions have now commenced; on 25 May 2020. Accordingly, all Bodies Corporate, and indeed Lot Owners, need to consider how these provisions may impact them.

While the underlying rationale for the changes is a good one, as with any rushed legislation there are significant loopholes and unintended knock on effects. For example, in normal circumstances it is unlawful to refund contributions paid to Lot Owners towards the sinking fund.

This can make it very difficult and time consuming to give the effect of a refund to Lot Owners where items have been included in the sinking fund budget that should not have been. For example, because a particular item was required to be maintained by Lot Owners and not the Body Corporate.

In such cases normally once the mistake is identified sinking fund contributions are then reduced prospectively, until the over allowance has been "caught up".

The changes introduced above and particularly Section 323D, allow a Body Corporate in this situation to:

- Amend their budget to bring forward all of the anticipated major expenditure items which were over, or improperly, provisioned for.
- In a second amendment to the sinking fund budget, remove those items from the expenditure for the current year (and indeed from the sinking fund analysis report altogether); and
- Refund all of the monies associated with the over, or improper, provisioning to the Lot Owners.

If you or your Body Corporate have financial trouble, then we strongly recommend that you take legal advice in relation to the changes.

There is every chance that you may be able to take advantage of them to assist with your situation.