

Battered Rule 31, the most significant of the prescribed management rules?



By [Anton Kelly](#)

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Prescribed management rule (PMR) 31 is the rule that gives the detail of how the provisions of section 37, which deals with general and special contributions, must be implemented.

A common mistake made by owners and less knowledgeable trustees in sectional title schemes is to assume that common expenses, particularly those perceived to benefit owners equally, such as security arrangements, should be paid equally. Both section 32(3)(c) of the Act and PMR 31(1) specify that the default proportion for the payment of scheme expenses is calculated according to the participation quota.

Once an owner falls into arrears with levy payments or disputes the legality of a levy, it is vital for the body corporate to be able to show that the levy is legally due and payable. The action that gives rise to this legal liability is the resolution of the trustees raising the levy and dispatching the required written notice to each owner. PMR 31(3) states specifically that levy amounts become payable upon these notices being sent. In taking this action, the trustees base their calculation on the amount agreed in terms of PMR 31(2) by the members at the AGM as being the amount of money required to operate the scheme for the coming financial year. It is the owners who set the amount required, but it is the action of the trustees raising the levy that makes the levy legally binding and collectable.

Two other significant provisions regarding levies are made in sub-rules (5) and (6). Owners are responsible for the costs the body corporate incurs in collecting arrear levies and the trustees may set an interest rate that applies to arrears.

Provisions added, deleted and repeated

PMR 31 has been changed several times over the years. Provisions have been added, deleted and repeated. Significantly, PMR 31(4), deleted in 2011, has reappeared as PMR 31(4B) and provides that special levies can only be raised to meet expenses that are necessary and unbudgeted. For other expenses, the trustees must include a provision in the budget they propose for the next AGM.

The loophole in the legislation that resulted in there being no legal liability for owners to pay levies between the end of the financial year and the trustees' resolution after each AGM was plugged by the insertion of PMR 31(4A). Unfortunately, this sub-rule was deleted by mistake in April 2013. One hopes that, like PMR 31(4), it will resurface very soon because schemes now must either:

- Fight opportunist owners who refuse to pay levies during that period on the grounds that they are not legally liable;

- Raise a special levy to cover the period; or
- Take a unanimous resolution reinserting the text of what was PMR 31(4A) into their individual schemes' management rules.

All of these courses are expensive, problematic or difficult to achieve.

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