# When does the BMC need to review its Shared Facilities?

The Building Management Committee (BMC) needs to review its Shared Facilities regularly to ensure fair cost allocation and prevent disputes among members.

Strata Management Statements are bespoke documents that vary significantly to match the needs of different buildings.

In every instance, however, a large part of this document relates to the management of "Shared facilities" – the items located within the area belonging to one of the BMC members that are used by one or more other members – such as lifts, or the external shell of the building itself.

The SMS contains a shared facility schedule, which lists the items that are shared facilities as well as the proportion that each member is required to contribute to that particular item.

The maintenance of shared facilities, and more particularly how much is to be contributed by each member is a common source of dispute between different members of the BMC, often due to the suggestion that the original apportionment was incorrect, or that circumstances have changed such that the previous apportionment is no longer fair.

A prudent BMC should be regularly monitoring its apportionments in order to ensure equitable allocation of costs, and thereby avoiding the unnecessary expenses incurred in escalating disputes regarding shared facility costs.

Since 30 November 2016, clause 2(1)(f) of Schedule 4 of the *Strata Schemes Development Act 2015* has required Strata Management Statements to include:

> *(f) a review process to ensure that the allocation of those costs remains fair with any such review taking place as soon as practicable after any change in the shared facilities or services (including any change in the use of those shared facilities or services), with at least one such review occurring every 5 years even if no such change has occurred, and*

If the SMS was registered after 30 November 2016 and does not contain a provision for the regular review of the SMS shared facilities, with a mandatory review at least every 5 years it will be in breach of the above requirement. This should be remedied with the members resolving an appropriate amendment to the SMS to reflect this requirement.

If the SMS was registered before 30 November 2016, it is not, strictly, a requirement to include a review every 5 years however it would be a reasonable amendment to the SMS for a member to propose, particularly as such a clause increases the likelihood of reducing formal disputes brought by dissatisfied members.

In either of the above circumstances, if an amendment cannot be agreed between the members, it will be necessary to utilise the dispute resolution mechanism under the SMS, which usually includes expert determination in order to seek the necessary amendment.

BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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For expert assistance with your BMC Shared Facilities, contact Bannermans Lawyers at (02) 9929 0226, email enquiries@bannermans.com.au, or visit https://www.bannermans.com.au.

**Key takeaways**

- Strata Management Statements must include a review process for shared facilities.
- Regular monitoring of shared facilities can prevent disputes among BMC members.
- A review of shared facilities is required at least every five years if registered after 30 November 2016.
- Amendments to the Strata Management Statement can help reduce disputes.
- Dispute resolution mechanisms may be necessary if members cannot agree on amendments.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

**Prepared by Bannermans Lawyers**
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BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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