

What a difference a day makes (well two days) - Beware of time limits when using mail services

Beware of time limits when placing notices for general meeting into the postal system

A recent case brought us back to basics with respect to the timeframes in which notices of general meetings must be served under the Strata Scheme Management Act 2015 ("**SSMA**").

Pursuant to Schedule 1 Clause 7(3) of the SSMA, different notice periods apply to different types of general meetings of the owners corporation. For annual general meetings, notice must be served on each lot owner at least 14 days before the general meeting. For general meetings other than an annual general meeting, notice of the general meeting of the owners corporation must be served on each owner at least 7 days before the general meeting. Please see below the excerpt of clause 7(2) of the SSMA:

"7 Notice of general meetings other than first AGM

(1) This clause applies to general meetings other than the first annual general meeting of an owners corporation.

(2) Written notice of a meeting must be given to-

(a) each owner; and

(b) each person entitled to cast a priority vote in relation to an item on the agenda.

(3) The notice must be given-

(a) if the meeting is an annual general meeting – at least 14 days before the meeting; or

(b) otherwise – at least 7 days before the meeting.

Note—A priority vote may be cast in the circumstances set out in clause 24.

(4) If the giver and receiver of a notice would be the same person, the notice is not required to be given to the person under this part.."

The owners corporation was recently stung in the decision of *ACA Developments Pty Ltd vs The Owners - Strata Plan No. 73759 (2023)* ("**ACA Development**"). In this case, a notice was issued to convene a general meeting of the owners corporation with a motion to pass a by-law aimed at restricting short-term accommodation. However, the notice was served 5 clear days prior to the scheduled meeting, failing to meet the mandatory 7 day requirement under the SSMA. As a result, the Tribunal declared the resolution made at that meeting as invalid and repealed the by-law registered subsequent to the motion's passage.

In ACA Development, the owners corporation served the meeting notice through a mailing company, and the mailing company lodged the notice with Australian Post 2 days short of the statutory requirement. Delivery to a mail house is not delivery to the postal system. In accordance with the Interpretation Act 1987, service of the notices was deemed to be effected on the seventh working day after they were posted, with the day of receipt excluded from the calculation.

The ACA Development case also highlighted the significance of strict compliance with the 7 day notice requirement, as established by a previous Supreme Court case, *The Owners - Strata Plan No 62022 v Sahade [2013] NSWSC 2002* ("**Sahade**"). In Sahade, the notice of the general meeting was served one day late, precisely six days before the meeting. The Supreme Court emphasized that strict compliance is necessary, particularly when the Act employs the terms "must" and "at least," ensuring the effectiveness of a properly served notice.

So what is a clear working day?

Considering the insights from these cases, it is vital to serve the general meeting notice to all owners a clear 7 days before the scheduled meeting, excluding the day of receipt and the meeting day itself. Set out below is an example calculation of the earliest day that the meeting may be held based on various service options:

Days	Service by post within Australia	Service by hand delivery	Service by email
Tuesday 1 March	Notice posted	Notice hand delivered	Notice sent by email
Wednesday 2 March	Working Day 1	Clear Day 1	Clear Day 1
Thursday 3 March	Working Day 2	Clear Day 2	Clear Day 2
Friday 4 March	Working Day 3	Clear Day 3	Clear Day 3
Saturday 5 March	Not a working day	Clear Day 4	Clear Day 4
Sunday 6 March	Not a working day	Clear Day 5	Clear Day 5
Monday 7 March	Working Day 4	Clear Day 6	Clear Day 6
Tuesday 8 March	Working Day 5	Clear Day 7	Clear Day 7
Wednesday 9 March	Working Day 6	Earliest date for meeting	Earliest date for meeting
Thursday 10 March	Working Day 7 – Deemed delivery		
Friday 11 March	Clear Day 1		
Saturday 12 March	Clear Day 2		
Sunday 13 March	Clear Day 3		
Monday 14 March	Clear Day 4		
Tuesday 15 March	Clear Day 5		
Wednesday 16 March	Clear Day 6		
Thursday 17 March	Clear Day 7		
Friday 18 March	Earliest date for meeting		

The type of general meeting being convened is crucial for determining the required notice period. The decision of ACA Development was determined before the amendment to the SSMA requiring a 14 day notice period for annual general meetings. If the general meeting in ACA Development was an annual general meeting, the owners corporation would have fallen well short of the 14 day notice requirement.

An example of a 14 day notice requirement for annual general meetings is provided below for clarity:

Days	Service by post within Australia	Service by hand delivery	Service by email
Tuesday 1 March	Notice posted	Notice hand delivered	Notice sent by email
Wednesday 2 March	Working Day 1	Clear Day 1	Clear Day 1

Thursday 3 March	Working Day 2	Clear Day 2	Clear Day 2
Friday 4 March	Working Day 3	Clear Day 3	Clear Day 3
Saturday 5 March	Not a working day	Clear Day 4	Clear Day 4
Sunday 6 March	Not a working day	Clear Day 5	Clear Day 5
Monday 7 March	Working Day 4	Clear Day 6	Clear Day 6
Tuesday 8 March	Working Day 5	Clear Day 7	Clear Day 7
Wednesday 9 March	Working Day 6	Clear Day 8	Clear Day 8
Thursday 10 March	Working Day 7 – Deemed delivery	Clear Day 9	Clear Day 9
Friday 11 March	Clear Day 1	Clear Day 10	Clear Day 10
Saturday 12 March	Clear Day 2	Clear Day 11	Clear Day 11
Sunday 13 March	Clear Day 3	Clear Day 12	Clear Day 12
Monday 14 March	Clear Day 4	Clear Day 13	Clear Day 13
Tuesday 15 March	Clear Day 5	Clear Day 14	Clear Day 14
Wednesday 16 March	Clear Day 6	Earliest date for meeting	Earliest date for meeting
Thursday 17 March	Clear Day 7		
Friday 18 March	Clear Day 8		
Saturday 19 March	Clear Day 9		
Sunday 20 March	Clear Day 10		
Monday 21 March	Clear Day 11		
Tuesday 22 March	Clear Day 12		
Wednesday 23 March	Clear Day 13		
Thursday 24 March	Clear Day 14		
Friday 25 March	Earliest date for meeting		

As demonstrated above, it is critical to ensure that notices for annual general meetings are posted to lot owners who elect to receive noticed via surface mail are served in accordance with the timeframes provided for in section 7(3)(b) Schedule 2 of the SSMA. Failure to do so may render any resolution made at this general meeting invalid.

In addition to the essential timeframe requirement for general meetings, the SSMA imposes other obligations in regards to convening a general meeting, such as the method of serving written notices and the recipients who must receive the notice. These requirements encompass various aspects related to convening a general meeting.

If you require guidance tailored to your specific situation, don't hesitate to reach out to Bannermans Lawyers for advice and assistance.

Prepared by Bannermans Lawyers
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