

# THE QUEENSLAND LAWYER

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## ARTICLES

**Management Rights Agreements for Body Corporates in Queensland: Must They Expire, or May They Be “Topped Up” Indefinitely?** – *Neil Samuel Hope, Dane Bryce Weber and Maija-Ilona Wilhelmiina Pekkanen*

There is a natural desire on the part of the holders of caretaking agreements to keep those agreements alive for as long as possible to protect the value of the asset embodied in such agreements. Term limits with respect to such rights are determined by statute, however, without any definitive authority on the interpretation of the statutory provisions that apply, caretakers and body corporates alike appear to rely purely on “standard industry practice” to allow unlimited extensions to such agreements. While “standard industry practice” is not an authoritative source of law, there unfortunately exists no definitive authority as to the interpretation of those term limits to settle the tension. May caretaking agreements be extended indefinitely, or do they have a set expiration date, notwithstanding “standard industry practice” or contracts that might suggest otherwise? ..... 175

**Amendments to the Small Business Capital Gains Concessions** – *Francesco Maconi*

The small business capital gains concessions contained in Div 152 of the *Income Tax Assessment Act 1997* (Cth), which are (1) the 15-year exemption, (2) the 50% active asset reduction, (3) the retirement exemption and (4) rollover relief, were designed to provide CGT relief for taxpayers who chose to dispose of an active asset in a small business. If a taxpayer wants to utilise the small business concessions, the taxpayer must satisfy certain conditions (the “access conditions”). The access conditions are complex and difficult to apply in practice. Under the most recent 2018 amendments introduced by the *Treasury Laws Amendment (Tax Integrity and Other Measures) Act 2018* (Cth), the federal government has amended the third access condition, which applies when a taxpayer disposes of an interest

in a company or trust. This article argues that the amendments are a missed opportunity to simplify access to the small business concessions, which has become more complex than ever before. .... 192

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