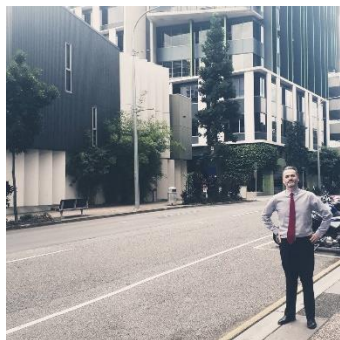


Commissioner Foreword

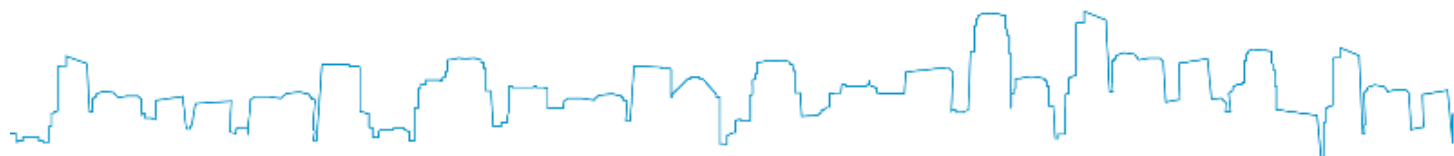


2019 is definitely off and running in my part of the world.

This year I am hoping to continue with the work I did during my academic placement in 2018, looking at ways to innovate what we currently do to be more responsive to client needs, while not losing any of the services we already provide.

My calendar is already filling up with seminars and meetings in the first half of the year and so if you do get a chance to attend one of these events, please say hello and let me know your thoughts. It is the best way for me and my team here to be able to enhance our service delivery to you.

Chris Irons
Commissioner
Office of the Commissioner for Body Corporate and Community Management



Frequently Asked Questions – Pets

One of the most common issues dealt with by this office in conciliation is the refusal of pets by the body corporate. Here are a few common FAQs which might help you through some of these issues:

Q1. Has the law changed recently to make pets allowed in community titles schemes?


In 2008, as a consequence of an appeal of an adjudicator's decision, the Queensland Civil and Administrative Tribunal (QCAT) formerly Queensland Consumer and Commercial Tribunal (CCT) considered whether or not a by-law that applied an absolute ban on pet ownership exceeded a body corporate's authority. The QCAT decided that imposing an absolute ban on the keeping of animals was unreasonable. As a consequence subsection 7 was inserted to section 180 of the Body Corporate and Community Management Act 1997 (Act) in 2009. Section 180 of the Act, provides for limitations on by-laws. A by-law cannot be oppressive or unreasonable, having regards to the interests of all owners and occupiers of lots included in the scheme and the use of the common property. It is now a settled matter of law that adjudicators and other jurisdictions have found that prohibiting animals outright is in conflict with the powers (sections 180(7), 169 and 94, Act) given to a body corporate to effectively govern and regulate lots and common property.

Q2. I have previously had a cat approved who has since passed away. Can I get another one without having to go through the approval process again?

Not as of right. Most approvals for pet ownership given by the body corporate are specific for the animal that you currently own or are buying. That approval does not automatically transfer to any new animals you wish to purchase. You may wish to check the wording of the approval given.

Q3. I asked for approval of my pet and the body corporate advised me that it's approved but gave me a list of conditions. Do I need to comply with the conditions?

Not all bodies corporate welcome pets with open arms. Sometimes other owners in the complex have concerns about the impact that pets may have on them and their lifestyle. Most of those concerns can be addressed by imposing conditions. If you don't agree with all of the conditions imposed by the body corporate you should discuss



your concerns with them in the first instance. If there is no agreement on the list of conditions then the body corporate may not be in a position to approve your pet. There have been a number of adjudicators' orders which have dealt with conditions imposed by bodies corporate. Some of those conditions have included, but are not limited to:

- The animal must be adequately restrained on common property
- The animal must be kept within the boundaries of the lot
- The animal must not create unreasonable noise disturbance
- Any droppings from the animal within the lot or on common property must be cleaned up immediately and disposed of in such a way that it does not create noxious odours or otherwise contaminate the scheme

Previous adjudication orders can be searched [online](#).

Q4. My pet was approved and now the body corporate is saying I have to remove it because they say it barks too much.

That may be the case. Just because your animal is approved does not mean that it can misbehave. Owners need to take responsibility for their pets and ensure they do not cause nuisance to other owners and occupiers.

Q5. Every time someone asks for a pet in my body corporate the body corporate says no, and tell owners to apply for a dispute application with BCCM. Is it ok for the body corporate to get BCCM to make the decision?

No, to put it bluntly. In fact the Commissioner's Office should be the last port of call. An applicant must attempt self-resolution before lodging a dispute with our office. If you have exhausted all avenues available to you to get a formal decision from the body corporate, then you may need to lodge your application. Since 2009 adjudicators orders have consistently ordered in favour of the pet owner, unless there has been good reason not to. This should be a good indication to all bodies corporate that it's unlikely their decision not to approve the pet will be upheld. Your body corporate could be wasting valuable time and money (and remember, that money is money contributed by each owner in the form of levies) if applications to this office, are based on a 'longstanding no pets policy' or 'house rules' to apply a ban on the keeping of pets. It also means that any potential purchaser who does a search of adjudicators orders on your scheme may see that it is particularly litigious and look elsewhere.

Q6. My dog is a therapy dog for my anxiety. Do I still need to ask the body corporate for permission?

If your dog is certified under the Guide, Hearing and Assistance Dogs Act 2009 then you don't need to ask for permission to keep your dog. If your dog is not certified, you will need to seek permission just as you would for any animal. In other words, there is a difference between a certified animal and a therapy or companion animal.


Q7. I am trying to sell my unit and every time a prospective purchaser is interested the body corporate says no to their request for an animal. What can they do?

Our Office does not have jurisdiction to deal with disputes between a purchaser and the body corporate. We often suggest that both the current owner and the purchaser make attempts to resolve the issue by asking the body corporate to approve the animal first. If the body corporate does not approve the request to keep the animal the current owner may consider applying for conciliation and name the purchaser as an interested person in the application. If the application is not resolved before the settlement of the property a request can be made to substitute the applicant to the new owner's name.

You can read an adjudicators order that dealt with a purchaser's request for an animal [here](#).

Q8. My by-laws states that I cannot have an animal that weighs over 10 kilograms. Can they put that restriction in an animal by-law?

In the majority of circumstances adjudicators have ruled a body corporate is not able to put a weight restriction on the ownership of animals. It has been ruled that the size of an animal is not an indicator of the impact it may or may not have on other owners within the community titles scheme.



Q9. I rent a unit in a complex which has a by-law which requires me to ask for permission to keep an animal. I requested for an animal from the body corporate and the owner. They both said no. What can I do?

If you are renting a property you will need to check the terms of your tenancy agreement to see if you have permission from your owner. For more advice on your rights under the tenancy you may wish to contact the Residential Tenancies Authority (RTA) on 1300 366 311.

If your owner has given approval for you to keep a pet, you will also need permission from the body corporate. As a tenant you have the same rights as an owner to ask the body corporate for permission to keep an animal. If the body corporate says no, you have the right to dispute that decision through our Office if you believe it to be unreasonable or unlawful.



Understanding adjudicators' orders

Do you ever feel like it's impossible to predict how the law will apply to your community titles scheme, or how your by-laws will be interpreted if they are ever disputed?

Working out how the law applies to your scheme and circumstances can be challenging.

Previously we have briefly touched on the benefits of using past decisions to help understand how an adjudicator might interpret laws or by-laws in the event of a dispute. If you've been involved in a conciliation session, you may have had a conciliator explain how previous adjudication decisions may assist in predicting the likely outcome of your dispute if it were determined by adjudication.


With this in mind, some insight will be given into how past decisions are used by adjudicators to shape future decisions, and how they can help you understand how a dispute may be decided.

The first concept to understand is **precedent**. In general terms, precedent means that, where a case comes before a judge, magistrate or (in this case) an adjudicator with the same essential or material facts as a case decided by a higher court (in the same hierarchy), the legal issues must be decided in the same way. Essentially, decision-makers are bound by the findings of law reached by decision-makers at a higher level within their legal jurisdiction. This is called **binding** precedent.

For adjudicators, this means decisions made by the Queensland Civil and Administrative Tribunal (QCAT)—the appellate jurisdiction—Queensland's District Court, Supreme Court and Court of Appeal, and the High Court of Australia must all be followed. If there are conflicting decisions made within a jurisdictional hierarchy, the decision made at the higher level will take precedence.

There is some uncertainty at the moment as to whether decisions in higher courts that are not in the same hierarchy should be considered binding, but they will, at least, be persuasive.

An adjudicator is not bound to follow the decision of another adjudicator in the same way. As they are at the same level in the hierarchy, decisions of adjudicators may be **persuasive** to other adjudicators, but not binding. They will, however, usually be based on the same decisions made by higher courts and tribunals, and will generally provide a good guide to how adjudicators interpret the law.



Decisions made in other jurisdictions, for example in other states or overseas, may not be binding on an adjudicator but may be of persuasive precedent. The relevance of the legal issue decided and the level of the court or tribunal that made the decision may affect how persuasive the decision will be.

When considering the application of a decision, it can be important to distinguish between the substantive reason for the decision (known as the **ratio decidendi**) and the decision-maker's commentary or opinion on the law which is not essential to the decision (known as **obiter dictum**). Generally, obiter (other than 'seriously considered dicta' from High Court judgements) will not be binding.

In terms of understanding the past decisions of adjudicators, the following factors should be kept in mind:

- The outcome of a dispute is less important than the reasons behind the decision. For instance, in some cases pets have been allowed to remain in a scheme and in other cases they have been required to be removed. In applying such decisions, it will be necessary to consider the circumstances of each specific case, such as whether the particular pet had any proven impact on others in the scheme.
- Your dispute would need to have the same or similar underlying facts as a past decision for you to be comfortable that it would be decided the same way. For example, a dispute over the maintenance of a courtyard may have a very different outcome if the courtyard is part of a lot, rather than being an exclusive use area.
- Adjudicators' decisions will generally explain the case law on which the adjudicator relied when making their decision. This may include references to other decisions by adjudicators, QCAT or higher courts. These references can be used to guide further reading on the relevant issues.
- More recent decisions are more likely to reflect the current state of the law, as subsequent decisions made by higher courts and tribunals may have changed the way the law has been interpreted over time.
- Where a decision has been overturned on appeal, it is important to understand the reasons behind the appeal decision. It may be that new evidence changed the underlying facts, or a technical or jurisdictional issue came into play, rather than an error being found in the application of the law.

Past decisions of adjudicators are published by the Australian Legal Information Institute (Austlii). They can be accessed [online](#).

There are several advanced search tools on Austlii to help you locate the most relevant decisions for the issue you are looking at, including:

- exact phrase searches (e.g., "reasonable attempt to participate")
- boolean queries (e.g., "nuisance AND 167 NOT dog")
- searches of the document title only (e.g., "Surfers Paradise").

Searches can also be sorted by date by clicking the relevant tab on your search results.

It is important to note that the Information Service of my Office is not able to offer an opinion on how an adjudicator is likely to interpret a matter or provide commentary about past adjudicators' orders.

That said, the Information Service can give general information about body corporate legislation. For further information please contact 1800 060 119 or visit our website www.qld.gov.au/bodycorporate.



BCCM update

We are planning to continue on with our webinar series, collaborative seminars with stakeholders and continue to develop our information products and community education.

Webinar

This month we will be conducting a webinar on enforcing body corporate by-laws. By-law enforcement has its own, prescriptive process which must be followed, so this is an essential webinar for anyone with by-law issues. We will have a specific focus on pets and parking which are our top two dispute topics.

Time: 2pm

Date: 27 February 2019

Topic: Enforcing body corporate by-laws.

[Please register](#) your interest as we will only have places for the first 100 participants.

Combustible cladding

We have been working with the Queensland Building and Construction Commission to provide some information about bodies corporate responsibilities with regards to the registration of their building under the new combustible cladding regulations.

If you think that your scheme could be one that is affected by combustible cladding you may want to [read our fact sheet](#) to find out more.

Practice Direction 36 – Rescheduling a conciliation

Sometimes it is not always possible to attend the conciliation that has been scheduled for you. Before requesting for your session to be rescheduled please read our new [practice direction 36 – Rescheduling a conciliation session](#) to find out what steps, if any, that you can take.

Website changes

We have changed the look of our website landing page www.qld.gov.au/bodycorporate. It is far less overwhelming and hopefully easier for you to navigate our more commonly searched topics. Feel free to let us know what you think at bccm@justice.qld.gov.au.

Shortcut to our webpages

Just a reminder that we have some shortcuts to get you to our most commonly used webpages. Here is a list of these for you:

Home page	www.qld.gov.au/bodycorporate
Pay for BCCM services	www.qld.gov.au/bodycorporatepayments
BCCM seminars	www.qld.gov.au/bodycorporateseminars
Do our online training	www.qld.gov.au/bodycorporatetraining
Dispute resolution	www.qld.gov.au/bodycorporatedisputes
Conduct a search of adjudicators' orders for a particular scheme you are considering buying into	www.qld.gov.au/searchofadjudicatorsorders

Community titles scheme statistics

There has been continued growth in the community titles sector in Queensland. The latest figures from the Land Titles Registry can be seen below. These figures are as at 30 December 2018.

Number of Community Titles Schemes as at end of December 2018 = 48,895
(approximate increase of 2.7 percent from December 2017)

Number of Lots as at end of December 2018 = 485,251
(approximate increase of 3.5 percent from December 2017)

The number of schemes which are registered under the five different types of regulations

Standard	29,576
Small Schemes	10,021
Accommodation	4,128
Commercial	2,143
Specified Two-Lot Schemes	3,111

There has been a decrease in the number of schemes registered under the standard module. This may be explained by smaller schemes and duplexes moving over to the Specified Two-Lot Schemes Module and the Small Schemes Regulation Module.

(Please note, the Titles Office are aware of the discrepancy in the total number of schemes.)

BCCM statistics

Dispute applications received

Conciliation		Adjudication	
2017	2018	2017	2018
611	653	747	771

Top five subject matters (descending order) for dispute applications

Conciliation		Adjudication	
2017	2018	2017	2018
By-laws – Animals	By-laws – Animals	General Meetings – Procedure	General Meetings – Procedure
Improvements – Owner	Improvements – Owner	General Meetings – Motions	General Meetings – Motions
Maintenance	Maintenance	Maintenance	Maintenance
By-laws - Other	By-laws - Other	By-laws - Animals	Improvements - Owner
By-laws - Vehicles	By-laws Vehicles	Improvements- Owner	Change of Financial Year

Client contacts

	2017	2018
Calls	18,410	18,935
Correspondence	2752	2736
Seminars - held	Nil	15 – (total audience – 565)
Seminars attended	53 – (total audience – 1761)	33 – (total audience – 962)**

** data not complete



Top five enquiry types to the Information service

2017		2018	
Act & Regulations	18.4%	General Meetings	13.2%
Committee	12.6%	Maintenance / Improvements	12.6%
Maintenance / Improvements	8.6%	Committee	10.6%
General Meetings	8.5%	Dispute Resolution	9.6%
Website	8.1%	By-laws	8.1%

Dispute resolution applications

We have noticed an increase in the number of individuals and companies who are submitting multiple copies of their dispute resolution application. Please be aware that we require **one copy** of the dispute resolution application **only**. We do not need applications lodged in duplicate or triplicate. This includes not sending an original copy if you fax or email the application.



Body Corporate and Community Management

www.qld.gov.au/bodycorporate

1800 060 119

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