

Common ground

Body Corporate and Community Management Newsletter



Issue 2 November 2008

The Commissioner's update

Welcome to our second issue of Common Ground and the last for 2008. As many readers would be aware, the new Regulation Modules associated with the *Body Corporate and Community Management Act 1997* (the BCCM Act) commenced on 30 August 2008. The new regulations replace previous modules which were due to expire by September this year.

After more than ten years since the introduction of the legislation, it was time to comprehensively review the effectiveness and relevance of the regulations. In February 2008 the department released a regulatory impact statement for the new regulations and invited public submissions. The new regulations are the result of extensive consultation with key stakeholders.

Queensland's bodies corporate manage a diverse range of properties and the new regulations will provide the flexibility bodies corporate need in their day-to-day operations. The new regulations ensure committees have sufficient and appropriate powers to operate effectively and efficiently. This issue will provide an overview of the major changes to the standard module. Please visit our website for further information.

As canvassed in the regulatory impact statement, it is likely that a regulation to govern residential schemes with only two lots will be made next year. There are 12,088 residential two-lot schemes, representing up to 30 per cent of all schemes in Queensland. The review of the regulations found that many residential two-lot schemes operate outside the regulatory framework, particularly in the areas of decision-making and financial management. The proposed regulation will simplify management arrangements for the respective owners in residential two-lot schemes.

With the holiday season around the corner we have added interesting facts on the industry in Queensland and even a body corporate crossword to test your knowledge (ideal for the beach) in this issue. Look out for our first newsletter for 2009 and all the best for the end of 2008.

Nicola Doumany
Commissioner for Body Corporate and Community Management

In this issue

- Commissioner's update
- Conciliation – a case study
- FAQs
- BCCM crossword
- New regulations

Fast facts – Did you know?

As at 30 August there were 36,613 community titles schemes in Queensland and 338, 825 lots!

- 12, 088 of those schemes had only two lots
- 25, 448 schemes consisted of six lots or less
- 30, 257 schemes consisted of 10 lots or less
- 33, 403 schemes consisted of 20 lots or less
- 35, 537 schemes consisted of 50 lots or less
- there are 292 schemes in the state with more than 100 lots
- 'Chevron Renaissance' community titles scheme has the greatest number of lots in Queensland with 718
- There are approximately 1,300 new schemes each year in Queensland.

The BCCM Office dealt with 1,121 applications in 2007-08 involving 645 schemes. Clearly, most bodies corporate are able to resolve disputes without intervention.

Contact details

The Office of the Commissioner for Body Corporate and Community Management

Post: GPO Box 1049, Brisbane Qld 4001
Phone: 1800 060 119
Website: www.justice.qld.gov.au/bccm
Email: bccm@justice.qld.gov.au



Queensland Government
Department of Justice and Attorney-General

Conciliation – a case study

As many readers are aware our office provides a conciliation service for body corporate disputes. Most applicants must apply for conciliation of their dispute before applying for adjudication.

Conciliation can provide information on the legislation and support ongoing relationships within bodies corporate as the following case demonstrates.

Peter and Dianne were lot owners. Their daughter was going overseas on a working holiday for about 12 months and had asked them to look after her pure-bred dog which was used to living in the daughter's unit a few kilometres away.

Peter and Dianne formally requested permission from the body corporate committee to look after the dog while their daughter was away. The committee refused the request and Peter and Diane lodged an application with the BCCM Office seeking to overturn the committee decision. The application was suitable for conciliation and a conference was arranged.

The conciliator contacted the parties by telephone and briefly discussed the conciliation process stressing that it was an opportunity for the parties to make an agreement rather than have a third party (an adjudicator) to make a final decision for them. The body corporate provided written authority from the committee for the body corporate manager to attend the conference, indicating that they had acted on the manager's advice.

A conference was subsequently held.

Background

At that time there were a number of other lot owners who had received permission to keep animals at the scheme. The permission had been granted by previous committees over a number of years. The current committee had embraced a "no

pets" policy "for the good of the scheme." The manager had previously managed another body corporate where the committee had adopted a policy of refusing permission for any further pets without any problems. The body corporate's by-law read: *"The occupier of a lot must not keep an animal on the lot or the common property without the written permission of the committee."* The committee believed they could adopt a "no pets" policy on the basis of the by-law.

Peter and Dianne had previously been involved in a dispute with the body corporate committee and the body corporate manager about overdue levies and maintenance issues and there was tension between them and the committee.

The conference

The conciliator helped the parties identify the issues in dispute and provided them with information on adjudicators' orders for previous applications involving similar issues. The parties also discussed the actions of previous committees that had placed conditions on owners when approving requests to keep a pet. There was also discussion about the motivations of the current committee, the voluntary nature of committee membership and the importance of lot owners making levy payments on time.

Outcome

The body corporate agreed to allow the application for the dog to stay at the unit. Peter and Dianne agreed to the same conditions that were required for the other pet applications. At a subsequent general meeting the body corporate moved a special resolution to change the current pet by-laws. The resolution was passed unopposed. Peter was elected to fill a vacant committee position at the same general meeting.

FAQs

Many of the frequently asked questions of the BCCM Office relate to its role and the dispute resolution process under the legislation. This issue of Common Ground looks at some of the points of confusion and frustration we see from those using our services.

Investigating complaints

Question:

I think my body corporate isn't complying with the Act. I don't want to lodge an application for dispute resolution. Why won't the commissioner investigate my complaint?

Answer:

In terms of the legislation, the jurisdiction of the Commissioner for Body Corporate and Community Management is limited to providing a dispute resolution and information service.

So, while the office may give out information on the Act, it cannot provide legal advice and cannot investigate a matter unless that investigation is carried out by an adjudicator on the basis of an adjudication application.

Even in the process of adjudication, parties still have responsibility to produce evidence to support their claim. They cannot simply make a claim and rely on the adjudicator to find supporting evidence. However, an adjudicator is authorised to require parties to provide other appropriate evidence.

How can they dispute our decision?

Question:

The vast majority of owners in my body corporate voted by special resolution at our last general meeting allowing me to build a pergola on the common property. It was passed according to the provisions of the Act. Yet one unhappy owner who has always been hostile to me has lodged a dispute resolution application with the BCCM Office. He just wants to make my life difficult. It has now gone to adjudication and all owners have been asked to have a say. How can he dispute a valid decision of the body corporate and

put us to this expense? How could the commissioner have let it get this far?

Answer:

The Act gives parties the right to lodge a dispute resolution application on matters within the jurisdiction of the BCCM Office. While the Act empowers owners to make decisions at general meetings, it also provides owners with a right to dispute those decisions through the BCCM Office. The commissioner must ensure an application falls within the jurisdiction of the office.

However, the commissioner is not able to make a decision based on the merit of the application. That is the role of adjudication. If an adjudicator dismisses an application on the basis that it is frivolous, vexatious, misconceived, or without substance they may also consider making an order that the applicant compensate the respondent to the dispute for costs up to \$2000.

Parties to a dispute

Question:

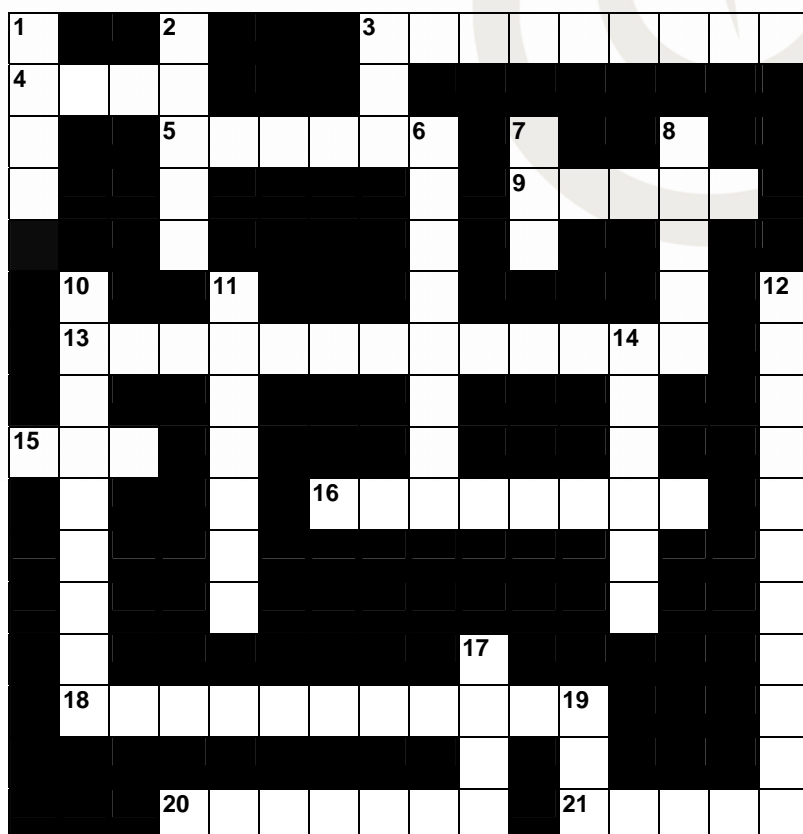
My body corporate has just hired a new body corporate manager who goes against any motion I put up to an AGM, and never answers my correspondence. I am an owner in the scheme and have been told that I can't lodge an application against the manager. Why not?

Answer:

Section 227 of the Act governs who may be parties to a dispute and is very particular about the combination of parties who may have a dispute under the Act. Only the body corporate can lodge a dispute against the body corporate manager. This is because the contract for supply of body corporate management services is between the body corporate and the body corporate manager. As an owner you may only lodge a dispute against another owner in the scheme or the body corporate for the scheme.

If the body corporate has not included your motions on the agenda for the general meeting, you may be able to lodge an application naming the body corporate as the respondent in the matter.

The BCCM Crossword



Across

3. The chairperson is a voting member of the (9).
4. The body corporate budget and contribution schedule lot entitlements in a scheme determine the (4) payable by owners.
5. Under new regulations bodies corporate can set spending (6) for committees at general meetings.
9. The original (5) of a community titles scheme must hold and call the first annual general meeting of the body corporate.
13. The (13) regulation module allows for a 25 year letting agent's authority.
15. Building Units Plan (3) is now known as Building Format Plan.
16. Under new regulations a body corporate must keep a (8) of reserved issues to be decided at general meeting rather than by the committee.
18. (11) can be called orally from the floor at a general meeting in order to fill committee vacancies.

20. The maximum (7) for late payments of body corporate levies is two and a half per cent per month simple interest.
21. We hope everyone enjoys the holiday season. But be careful not to (5) too hard or you might receive a by-law contravention notice.

Down

1. When determining responsibility for maintenance know your (4) of sub-division.
2. A (5) must be included in a Community Management Statement and must not discriminate between the types of occupiers.
3. The Commercial and Consumer Tribunal or (3) as it is often referred to can deal with complex disputes involving lot entitlements and contractual matters.
6. (8) over the committee limit requires a general meeting decision.
7. There are two schedules of (3) entitlements for a body corporate.
8. A body corporate must supply information to an interested person when correctly requested within (5) days.
10. At least every five years the body corporate must obtain an independent (9) for the replacement of buildings for insurance purposes.
11. There are four regulation (7) associated with the *Body Corporate and Community Management Act 1997*.
12. The regulation modules set out the criteria for (11) to be a voting member of the committee.
14. An adjudicator in the BCCM Office makes (5) to resolve body corporate disputes.
17. The BCCM Office is established under the (4) *Corporate and Community Management Act 1997*.
19. A Group Titles Plan under old legislation is now known as a Standard Format Plan (3).

New Regulations for the *Body Corporate and Community Management Act 1997* (the BCCM Act)

On 30 August 2008 new regulation modules associated with the BCCM Act commenced. These new modules replaced previous regulations which were due to expire. There are four Regulation Modules associated with the BCCM Act:

- the Standard Module Regulation
- the Accommodation Module Regulation
- the Commercial Module Regulation
- the Small Schemes Module Regulation.

Many of the provisions from the previous modules have remained relatively unchanged. However, readers should be aware that the section numbering in each new module has changed. Previous regulation modules which commenced in 1997 have expired and should not be used as a reference for matters occurring after 30 August 2008. Electronic copies of the new regulations are available from the BCCM website and hard copies can be purchased from SDS Publications via:

- www.bookshop.qld.gov.au
- email – service@sds.qld.gov.au
- telephone: 07 31186900 or 1800 679 778 (outside Brisbane).

This article will highlight the major changes to the *Body Corporate and Community Management (Standard Module) Regulation 2008*. It is not an exhaustive guide and the legislation should be used as the primary reference.

Eligibility for committee (section 10)

A member of the body corporate or a person nominated by a member of the body corporate is not eligible to be a voting member of the committee if the member owes a body corporate debt when the voting members of the committee are chosen.

Lot owner's right of nomination (section 17)

A lot owner who owns more than one lot can nominate more than one person for committee membership. However, if there are less than seven lots in the scheme, the lot owner may not nominate more than two people or if there are seven or more lots in the scheme, the lot owner may not nominate more than three people. A lot owner cannot nominate a person for committee membership if the lot owner owes a body corporate debt when the nomination is received by the secretary.

Conduct of ballot – scrutiny of votes (section 25)

Where a ballot is conducted for committee elections, the person chairing the meeting can delegate a function defined in section 25 of the Standard Module. This section deals with the scrutiny of votes to a person attending the meeting who is not a candidate for the position and who, in the chairperson's opinion, has sufficient independence.

Exceptions to restricted issues for committee (section 43)

Usually a committee is restricted from paying remuneration. However, the body corporate can, by ordinary resolution, authorise the committee to repay expenses to a committee member. Information about the payment must be included in an explanatory schedule with the voting paper for the general meeting.

Calling general meetings (section 65)

A member of the committee, including a non-voting member, can only call a general meeting if they are authorised by a committee resolution.

Transfer fee (section 126)

The service contractor or letting agent for a scheme must pay a transfer fee to the body

corporate when the transfer occurs within two years (the prescribed period) of the initial contract date (see below).

Previously, it was optional for the body corporate to request the payment. The transfer fee will be either:

- three per cent of the fair market value for the transfer if it is approved in the first year after the initial contract date; or
- two per cent of the fair market value for the transfer if it is approved after the first year after the initial contract date.

The service contractor or letting agent may ask that the transfer fee be waived because of genuine hardship. If they are seeking a waiver of the fee they must give the body corporate supporting documentation.

The definition of the initial contract date is included in section 124 of the Standard Module Regulation. It means the day on which the contractor/letting agent entered into the engagement or if the engagement or authorisation is a replacement or renewal of an engagement or authorisation of the contractor/letting agent, the day on which the contractor first entered into any engagement or authorisation that has been continuously replaced or renewed (which ever is the earlier).

Committee spending (section 151)

The relevant limit for committee spending can now be set by ordinary resolution of the body corporate. This is to assist bodies corporate to set a limit which suits the nature of their scheme. If no amount is set, the default amount can be calculated by multiplying the number of lots in the scheme by \$200.

Major spending authorised at general meeting (Section 152)

The relevant limit for major spending by the scheme can also be set by ordinary resolution of the body corporate. If no amount is set, it is the lesser of:

- multiplying the number of lots in the scheme by \$1100; or
- \$10 000.

Major spending by committee (section 153)

If the committee is considering a motion to carry out work that is above the limit for major spending for the scheme, the committee must get at least two quotations.

Improvements to common property by the body corporate (section 163)

There are four circumstances where improvements to the common property may be authorised:

Cost of Improvements*	Authorised by
Basic improvement limit (up to \$300 x the number of lots in the scheme)	The committee (subject to section 151 on committee spending)
Ordinary resolution improvement range (an amount that is more than the basic improvement limit and not more than \$2000 x the number of lots in the scheme).	Ordinary resolution (once per year)
An amount over the ordinary resolution improvement range.	Special resolution
Otherwise	Adjudicator's order

*Cost of the improvements, or, if a number of improvements together, form a single project, the cost of the entire project.

Improvements to common property by a lot owner (section 164)

A lot owner may only make an improvement to the common property if authorised by ordinary resolution of the body corporate. If the improvement is minor (\$3000 or less), the committee may give approval.

Valuation for insurance (section 181)

If the body corporate is required to insure one or more buildings, the body corporate must obtain an independent valuation for the full replacement value of the buildings at least once every five years. Details about the most recent valuation must be included in the notice of the annual general meeting or any note attached to the administrative fund budget proposed for the annual general meeting.

Use affecting premium (section 188)

The lot owner must give the body corporate details of any use of the lot which may affect the premium for reinstatement insurance or public risk insurance.

Register of reserved issues (section 201)

The body corporate must keep a register of any issues that have been reserved for decision by ordinary resolution of the body corporate. The notice of the annual general meeting must be accompanied by a copy of the register of reserved issues.

For more information

Many of these changes are also reflected in other modules. A factsheet providing an overview of all of the changes in each module is available on the publications page of the BCCM website.

Crossword solution

P			B				C	O	M	M	I	T	T	E	E
L	E	V	Y				C								
A			L	I	M	I	T	S		L			S		
N			A					P		O	W	N	E	R	
			W					E		T			V		
	V			M				N					E		E
	A	C	C	O	M	M	O	D	A	T	I	O	N		L
	L			D				I				R			I
B	U	P		U				N				D			G
	A			L			R	E	G	I	S	T	E	R	I
	T			E									R		B
	I			S									S		I
	O									B					L
	N	O	M	I	N	A	T	I	O	N	S				I
									D			F			T
			P	E	N	A	L	T	Y			P	A	R	T